CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 49

GEORGE W. GRIFFITHS, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 10, 1939.

CERTIORARI GRANTED OCTOBER 9, 1939.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1938.

No. .....

GEORGE W. GRIFFITHS,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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Incomplete

TRANSCRIPT OF RECORD

IN THE

United States Circuit Court of Appeals

For the Seventh Circuit

No. 6752

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

GEORGE W. GRIFFITHS,
Respondent.

Counsel for Petitioner:
MR. JAMES W. MORRIS,

Counsel for Respondent:
MR. DELBERT A. CLITHERO,
MR. HERMAN A. FISCHER,
MR. CARLTON L. FISCHER,

Petition for Review of Decision of the United States Board of Tax Appeals.

TRANSCRIPT OF RECORD FILED SEP. 6, 1932.

IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

No. 6752

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

GEORGE W. GRIFFITHS,
Respondent.

Counsel for Petitioner:
MR. JAMES W. MORRIS,

Counsel for Respondent:
MR. DELBERT A. CLITHERO,
MR. HERMAN A. FISCHER,
MR. CARLTON L. FISCHER,

Petition for Review of Decision of the United States Board of Tax Appeals.

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1 George W. Griffiths,
Petitioner,
vs.
Commissioner of Internal Revenue,
Respondent.
} Docket No. 82624.

Appearances:

For Petitioner: Herman A. Fischer, Esq.

For Respondent: C. H. Curl, Esq.

DOCKET ENTRIES.

1936

Jan. 6—Petition received and filed. Taxpayer notified. (Check returned for correction.)

Jan 11—Copy of petition served on General Counsel.

Jan. 11—Corrected check received—fee paid.

Mar. 2—Answer filed by General Counsel.

Mar. 6—Copy of answer served on taxpayer.

Mar. 13—Motion for circuit hearing in Chicago filed by General Counsel.

Mar. 16—Hearing set April 8, 1936 on motion.

Apr. 8—Hearing had before E. H. Van Fossan, Division 9, on motion of respondent to Circuit Calendar for Chicago—granted.

Apr. 8—Order that motion to place on Chicago Circuit Calendar be granted and proceeding placed on Circuit Calendar for hearing in Chicago, entered.

1937

Apr. 15—Hearing set week of June 14, 1937, Chicago, Ill.

May 8—Motion for leave to file reply filed by taxpayer—reply lodged.

May 17—Motion for leave to file reply granted.

May 18—Copy of motion and reply served on General Counsel.

June 24—Hearing had before J. E. Murdock on the merits. Called June 14, 1937. Stipulation as to the facts filed. Petitioner's brief due Aug. 15, 1937. Respondent's brief due Sept. 1, 1937. Taxpayer's reply due Sept. 15, 1937.

July 30—Transcript of hearing June 24, 1937 filed.

Aug. 13—Brief filed by taxpayer. 8/13/37 copy served on General Counsel.

Aug. 27—Brief filed by General Counsel.

Sept. 15—Reply brief filed by taxpayer. 9/15/37 copy served on General Counsel.

1938

Feb. 9—Findings of fact and opinion rendered—John E. Murdock, Division 3. Decision will be entered under Rule 50.

Mar. 2—Computation of deficiency filed by General Counsel.

Mar. 3—Hearing set March 23, 1938 on settlement.

Mar. 16—Consent to settlement filed by taxpayer.

Mar. 21—Decision entered—J. E. Murdock, Division 3.

June 15—Petition for review by U. S. Circuit Court of Appeals, Seventh Circuit, with assignments of error filed by General Counsel.

June 21—Proof of service filed by General Counsel (2—taxpayer and counsel).

Aug. 10—Agreed statement of evidence lodged.

Aug. 10—Praecipe of record filed by General Counsel with proof of service thereon.

Aug. 13—Agreed statement of evidence approved and ordered filed.

Aug. 13—Order enlarging time to 9/10/38 to transmit and deliver record entered.

Filed Jan. 6, 1936.

2 UNITED STATES BOARD OF TAX APPEALS.

George W. Griffiths, *Petitioner,*
vs.
Commissioner of Internal Revenue, *Respondent.*
} Docket No. 82624.

PETITION.

Filed January 6, 1936.

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the respondent, the Commissioner of Internal Revenue, in his notice of deficiency dated November 1, 1935, and bearing symbols IT:E:Aj, HOB—10058; and as the basis of this petition alleges as follows:

1. Petitioner is an individual, having his principal office at 228 North LaSalle Street, Chicago, Illinois.

2. The notice of deficiency, a copy of which is hereto attached and marked Exhibit A, was mailed to the petitioner on November 1, 1935.

3. The taxes in controversy are individual income taxes

for the year 1933; and the notice states a deficiency of $61,219.97, tax and penalty, substantially all of which is in controversy.

4. Assignments of error:

In his determination of the amount of income tax as set forth in said notice of deficiency, the respondent has committed the following errors:

3 (a) The respondent has ignored a sale and assignment by the petitioner to G. W. G. Corporation of 5,000 shares of the capital stock of Oakridge Cemetery Corporation, which should have been regarded as an effective transaction.

(b) The respondent has erroneously treated a sale by G. W. G. Corporation of said 5,000 shares of the capital stock of Oakridge Cemetery Corporation as a personal transaction of petitioner's and not as a sale by said corporation.

(c) The respondent has treated certain transactions of G. W. G. Corporation as the petitioner's personal transactions, and based the finding of deficiency on the theory that the G. W. G. Corporation was, at most, the mere agent of the petitioner; but, at the same time, the Commissioner has inconsistently left in petitioner's gross income, as income received by him, the sum of $1243.13, paid to petitioner by said G. W. G. Corporation as interest on an indebtedness from said corporation to petitioner.

(d) The Commissioner has increased the amount of the deficiency as found by him by a fifty per cent penalty, stating that such increase is made under the provisions of Section 293-(b) of the Revenue Act of 1932. No facts exist which justify the imposition of any penalty under said section or under any other provision of the Revenue Act.

5. Statement of Facts.

On January 10, 1933, the petitioner was the owner of 5,000 shares of the capital stock of Oakridge Cemetery Corporation, and also had a claim for fraud which he asserted had been practiced upon him in the years 1925 and 1926 in inducing him to purchase this stock.

Under advice of counsel that it would be a proper transaction, petitioner, on January 10, 1933, assigned and transferred both this stock and this claim to G. W. G. Corporation, a corporation then organized by him, and which has ever since maintained its existence and transacted business. This transfer was made in consideration of

4 the covenant of said G. W. G. Corporation to pay to the petitioner the sum of $85,000.00 in installments over a term of years.

Following the consummation of the above mentioned transaction, G. W. G. Corporation effected a settlement of the above claim for damages, and in connection therewith sold this stock. In this settlement and sale, G. W. G. Corporation collected the amount of money which the deficiency letter proposes to treat as profits realized by the petitioner from the sale of the stock of Oakridge Cemetery Corporation.

Subsequently, and in the same year, 1933, the petitioner collected from G. W. G. Corporation $2,125.00 as an installment payment on principal, of which, in his income tax return, he treated $250.00 as a partial return of his investment, and treated the remaining $1,875.00 as profit. In the year 1933 the petitioner also collected from G. W. G. Corporation $1,243.13 as interest on the installment contract, and this interest was also returned by petitioner as profit. G. W. G. Corporation did not itself, in 1933, realize income by way of interest in that amount.

6. The petitioner, in his income tax return, fully disclosed the nature of this sale and the source and amount of the installment payment received thereon in the year 1933. The transaction was carried out and the return prepared under the advice of attorneys that it was a proper transaction and that a return made in the method used by petitioner correctly reflected the profit realized in 1933 from the transaction. Petitioner acted in the belief that this advice was well founded.

7. Prayer for Relief.

Wherefore, the petitioner prays that this Board will hear and determine this, his appeal, and prays that in so doing it will find the petitioner's return to have been properly made, the petitioner's profit realized in said year from the transaction in question to have been properly reflected in the return, and that the petitioner has done nothing to justify the imposition of any penalty upon him; and further prays that the deficiency may be re-ascertained on the basis of such findings.

Herman A. Fischer,
Counsel for Petitioner.

Herman A. Fischer,
Room 2500—1 N. LaSalle St.,
Chicago, Illinois.

State of Illinois }
County of Cook } ss.

George W. Griffiths, being first duly sworn on oath deposes and says that he is the above named petitioner and that he has read the foregoing petition and is familiar with the statements therein contained and that the same and all thereof is and are true as he verily believes.

Geo. W. Griffiths.

Subscribed and sworn to before me this 30th day of December, A. D. 1935.

Clarence H. Reeves,
Notary Public.

My commission expires April 18, 1938.

6 EXHIBIT A.

Nov-1 1935

IT:E:Aj
HOB-10058

Mr. George W. Griffiths,
228 North La Salle Street,
Chicago, Illinois.

Sir:

You are advised that the determination of your income tax liability for the year 1933, discloses a deficiency of $61,-219.97, tax and penalty, as shown in the statement attached.

In accordance with section 272 (a) of the Revenue Act of 1932 as amended by section 501 of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates

thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,
Guy T. Helvering,
Commissioner.
By (Signed) Chas. T. Russell,
Deputy Commissioner.

Enclosures:
Statement
Form 870
HOB:CMC

IT:E:Aj
HOB-10058-90D

In re: Mr. George W. Griffiths,
228 North La Salle Street,
Chicago, Illinois.

Year	Tax Liability	Tax Assessed	Deficiency	50% Penalty
1933	$42,053.04	$1,239.73	$40,813.31	$20,406.66
Total deficiency,			$61,219.97	

Consideration has been given to your protest dated April 23, 1935, addressed to the Revenue Agent in Charge, and to the contentions made at the conference held in the field on May 20, 1935, against adjustments proposed to your income tax return.

As the result, it is conceded that the item of $506.00 representing insurance premiums paid on a policy covering the life of a debtor, held as security for the debt is a proper deduction. With this exception the previous determination of liability has been sustained and the protest denied.

Net income less capital net gain reported,		$ 24,350.95
Add:		
1. Understatement of profit, sale of stock,	$73,558.92	
2. Alleged bad debts, disallowed,	16,725.32	
3. Reported loss, disallowed	500.00	
4. Legal expense eliminated,	2,000.00	92,784.24
Net income adjusted,		$117,135.19

Explanation of Adjustments.

1. Profit on the sale of 5,000 shares of Oakridge Cemetery Corporation stock computed as follows:

Amount received,		$100,000.00
Cost (acquired 1931 from John Griffiths Investment Trust),	$ 8,000.00	
Payment to E. H. Harrison,	14,566.08	
Markham and Allie, legal fee,	2,000.00	24,566.08
Profit,		$ 75,433.92
8 Amount brought forward,		$ 75,433.92
Reported,		1,875.00
Understatement of income,		$ 73,558.92

The alleged assignment of this stock to G. W. G. Corporation, (organized on the day of the sale, January 10, 1933) has been ignored, and the transaction treated as a sale by you, for your own account.

2. This adjustment is itemized as follows:

(a)	Carlton P. Perry,	$ 150.00
(b)	C. F. Van Sicklen,	3,000.00
(c)	Raymond Smith,	600.00
(d)	Prince and Whitely,	12,975.32
Total,		$16,725.32

(a) This appears to have been a four months' note dated November 25, 1914. Not deductible for the taxable year.

(b) One-year note dated August 1, 1921. Held not allowable during the taxable year.

(c) Note dated April 22, 1932, due December 15, 1932. Not shown to have become worthless during the taxable year.

(d) Seventy-five per cent of the debt of Prince and Whitely was claimed as a deduction in 1930, the balance $13,162.82 for the taxable year. Of the amount claimed $187.50 allowed and the balance $12,975.32 eliminated.

3. The available evidence indicates that the stock of Midas Oil Company became worthless in 1921.

4. Fee of Markheim and Allie allowed as shown in adjustment #1 above.

Computation of Tax.

Net income,		$117,135.19
Add: Capital net loss,		19,585.41
Income subject to surtax,		$136,720.60
9 Amount brought forward,		$136,720.60
Less: Dividends,	$76,628.92	
Exemption,	2,900.00	79,528.92
Subject to normal tax,		$ 57,191.68
Tax at 4% on $4,000.00		$ 160.00
Tax at 8% on $53,191.68		4,255.33
Surtax on $136,720.60		40,085.89
Total		$ 44,501.22
Less: 12½% capital net loss of $19,585.41		2,448.18
Net tax assessable		$ 42,053.04
Tax assessed		1,239.73
Deficiency		$ 40,813.31
50% penalty provided by Section 293 (b), Revenue Act of 1932		20,406.66
Total deficiency and penalty,		$ 61,219.97

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district and remittance should then be made to him.

HOB:CMC

Filed Mar. 2, 1936.

10 UNITED STATES BOARD OF TAX APPEALS.

* * (Caption—82624) * *

ANSWER.

Filed Mar. 2, 1936.

Now comes the Commissioner of Internal Revenue, by his attorney, Herman Oliphant, General Counsel for the Department of the Treasury, and for answer to the petition filed herein, admits, denies and alleges as follows:

1, 2 and 3. Admits the allegations contained in paragraphs 1, 2 and 3 of the petition.

4 (a) to (d), inclusive. Denies each and every allegation of error contained in the petition.

5. Admits that on January 10, 1933 the petitioner was

the owner of 5,000 shares of capital stock of the Oakridge Cemetery Corporation, and had a claim for fraud which he asserted had been practiced upon him in the years 1925 and 1926 in inducing him to purchase this stock; admits that the G. W. G. Corporation was organized by the petitioner; admits that in his income tax return the petitioner treated $1,875.00 as profit from an alleged sale of 5,000 shares of Oakridge Cemetery Corporation stock, but denies the remaining allegations contained in paragraph 5 of the petition.

11 6. Denies the allegations contained in paragraph 6 of the petition.

7. Denies that the petitioner is entitled to any of the relief for which he prays in paragraph 7 of the petition.

8. Denies, generally and specifically, each and every allegation contained in this petition not hereinbefore admitted, qualified or denied.

9. Respondent alleges that the petitioner filed a false and fraudulent income tax return for the year 1933, and that the deficiency for 1933 is due in part to fraud with intent to evade tax. The facts upon which respondent relies as a basis for the allegations of fraud are as follows:

(a) On or about February 17, 1934 the petitioner filed his Federal income tax return for 1933 in which he reported a net income on line 20 of $43,936.36, a capital loss on Exhibit L of $19,585.41, and a tax liability of $1,239.73.

(b) On line 11 of the income tax return which he filed for 1933, the petitioner reported $1,875.00 as the profit realized in 1933 on the disposition of 5,000 shares of the Oakridge Cemetery Corporation, whereas the petitioner well knew he had realized a taxable profit of not less than $75,433.92 on the transaction.

(c) In Exhibit F attached to his return the petitioner reported that the 5,000 shares in question had cost him

12 $8,000.00, that he had sold the shares on an installment basis for a gross price of $85,000.00, that legal fees paid in connection therewith amounted to $2,000.00, that the "Gross Unrealized Profit" from the transaction was $75,000.00, that the amount received in 1933 was $2,125.00, and that the taxable profit applicable to 1933 was $1,875.00. The petitioner's 1933 return contained no information with respect to the transaction other than in Exhibit F and on line 11.

(d) The petitioner first acquired the 5,000 shares in question in 1925 or 1926 upon the solicitation of one Robert D. Lay at a cost asserted by the petitioner to be $100,000.00. On or about October 30, 1931 petitioner sold the 5,000 shares

to the John Griffiths Investment Trust for $7,500.00 and on said transaction claimed and was allowed a loss deduction of $92,500.00 in his 1931 income tax return. On or about November 16, 1931 the petitioner reacquired the 5,000 shares from John Griffiths Investment Trust for $7,000.00 and on or about December 30, 1931 transferred the same shares back to John Griffiths Investment Trust for $7,000.00. Sometime later the petitioner received information that Robert D. Lay had been guilty of misrepresentation and fraud when Lay had induced him to acquire the stock, and acting on this information the petitioner demanded that Lay make restitution. After some controversy Lay acceded to the petitioner's demand, and paid the petitioner $100,000.00 by check No. 412, dated January 11, 1933 at Chicago, Illinois, and the petitioner returned the 5,000 shares to Lay. The petitioner had repurchased the 5,000 shares from the John Griffiths Investment Trust on January 10, 1933 for $8,000.00. The petitioner paid his informer $14,566.08 and paid $2,000.00 for legal fees in connection with the transaction. The petitioner realized a taxable profit of $75,433.92 on the resale of the 5,000 shares to Lay.

(e) In an effort to evade and defeat the payment of the full amount of Federal income tax due on the transaction for the year 1933 the petitioner caused the G. W. G. Corporation to be organized under the laws of Delaware on January 10, 1933, and on the same day went through the motions of entering into an agreement with the newly organized corporation, by the terms of which alleged agreement he pretended to sell the 5,000 shares to the corporation for an alleged consideration of $85,000.00, which amount, under the alleged agreement, was to be paid to the petitioner in installments running over a period of approximately thirty-nine years. The outstanding stock of the G. W. G. Corporation was wholly owned by the petitioner. The G. W. G. Corporation was not licensed to do business in the State of Illinois until February 11, 1933.

Wherefore, it is prayed that the appeal be denied and that the tax and penalty asserted in the notice of deficiency be in all respects approved.

(Signed) Herman Oliphant,
Herman Oliphant,
General Counsel for the Department of the Treasury.

Of Counsel:
C. H. Curl,
C. P. Reilly,
Special Attorneys, Bureau of Internal Revenue.

15 UNITED STATES BOARD OF TAX APPEALS. Filed May 17, 1938.

(Caption—82624)

REPLY.

Lodged May 8/37.

Filed May 17/38.

And now comes the petitioner, by Herman A. Fischer, his attorney, and for reply to paragraph 9 of the answer of the respondent herein, says:

1. This petitioner denies that he filed a false or fraudulent income tax return for the year 1933, and denies that the alleged deficiency for 1933 was properly increased by a penalty under Section 293-b of the Revenue Act of 1932 on the ground of fraud.

2. With respect to the facts which in the several clauses of said paragraph 9 of his said answer the respondent states that he relies upon as a basis for his allegations of fraud, this petitioner says:

(a) This petitioner admits the allegations of Clause (a) of said paragraph 9.

(b) This petitioner admits that on line 11 of his income tax return for the year 1933 he reported $1875.00 as the profit realized by him in 1933 on the disposition of 5000 shares of Oakridge Cemetery Corporation; but he denies that he realized a taxable profit thereon of
16 $75,433.92, or of any sum in excess of that reported by him, and denies that at the time he made his said return he knew that he had realized any other or different profit than that so reported by him.

(c) This petitioner admits the allegation in Clause (c) of said paragraph 9 contained.

(d) This petitioner admits the allegations contained in Clause (d) of said answer with respect to his initial acquisition of the shares in question, his sale thereof on which he had been allowed a loss deduction, certain subsequent intermediate transactions therein (which intermediate transactions are immaterial on the issues of this case), his subsequent information that one Lay had been guilty of misrepresentation and fraud, and the demand of restitution.

This petitioner denies that said Lay paid this petitioner $100,000 by check referred to in said clause; but states that, while a check for the amount referred to in

said clause was delivered by said Lay to petitioner, the petitioner received the same pursuant to an arrangement which petitioner had then recently made with G. W. G. Corporation. This petitioner therefore states that, as between himself and said G. W. G. Corporation he received said check for $100,000 solely as its agent. He admits that he had repurchased the 5000 shares from John Griffiths Investment Trust for $8000, but denies that he so repurchased it on January 10, 1933; and states that almost immediately upon the repurchase thereof he had entered into an agreement for its sale and had actually sold the same to G. W. G. Corporation, a Delaware
17 corporation, for the sum of $85,000, which sum was to be paid on an installment basis, and states that he correctly reflected his said resale in his said income tax return.

(e) This petitioner denies that he caused G. W. G. Corporation to be organized under the laws of the State of Delaware in an effort to evade and defeat the payment of the full amount of Federal income tax for the year 1933 due on the transaction referred to in said petition, and states that said G. W. G. Corporation was organized prior to any transaction on which Federal income tax was due or would become due. This petitioner admits that on the date said G. W. G. Corporation was organized he entered into an agreement with it by the terms of which agreement he sold to it the 5000 shares of said Oakridge Cemetery Association, together with such rights as he might then have against said Robert G. Lay to require said Lay to purchase said stock. He states that under said agreement of sale the consideration of $85,000 was to be paid to petitioner in installments running over a period of approximately thirty-nine (39) years. The petitioner states that the said G. W. G. Corporation was formed in good faith and with the intention that it should permanently transact business and that at the time it was formed here had been no transaction consummated to which any liability for Federal Income Tax could attach; and he denies that the said agreement is properly termed an alleged agreement, and denies that the action taken by him is properly termed "going through the motions of entering into an agreement." This defendant admits
18 that the outstanding stock of said G. W. G. Corporation was wholly owned by him; and (if it be material) he admits that said corporation was not licensed under the laws of the State of Illinois to do business in said State until February 11, 1933.

Wherefore this petitioner prays that the Board will find for this defendant upon all issues raised in the respondent's answer upon which the burden of proof is placed upon the respondent by statute.

Herman A. Fischer,
Attorney for Petitioner.

39 IN THE UNITED STATES CIRCUIT COURT OF APPEALS. Filed Aug. 13, 1938.

(Caption—BTA-82624)

STATEMENT OF EVIDENCE.

Lodged Aug. 10, 1938.

Filed Aug. 13/38.

The following is a statement of the evidence in narrative form in the above-entitled cause. This cause came on for hearing before the Honorable J. E. Murdock, Member of the United States Board of Tax Appeals on June 24, 1937, at Chicago, Illinois. Herman A. Fischer, Esq., appeared for the petitioner and C. H. Curl, Esq., Special Attorney, in the office of the Chief Counsel for the Bureau of Internal Revenue appeared for the Commissioner. The following facts were stipulated:

1. During the year 1926, the taxpayer purchased from or through Robert D. Lay 5,000 shares of the capital stock of Oakridge Cemetery Corporation at a cost of $100,000.00.

2. On October 30, 1931, the taxpayer sold certificate No. 861 for 5,000 shares of the capital stock of Oakridge Cemetery Corporation to John Griffiths Investment Trust for a consideration of $7,500.00. This stock was the same stock that he purchased in 1926 of or through Robert D. Lay for $100,000.00.

3. On November 16, 1931, the taxpayer reacquired the foregoing stock from the John Griffiths Investment Trust for a consideration of $7,000.00 and sold same back to said trust at the same price on December 30, 1931.

4. The taxpayer reported the sales of the said 5,000 shares of stock to the Trust, on his 1931 Federal income tax return, and claimed a loss of $92,500.00, which was allowed and the case closed by an agreement under
40 section 606 of the Revenue Act of 1928.

5. On January 10, 1933, the taxpayer gave his personal check No. 2520 to the John Griffiths Investment Trust for the sum of $8,000.00 and the certificate for 5,000

shares of the capital stock of the Oakridge Cemetery Corporation endorsed in blank was delivered to the taxpayer.

The evidence introduced at the hearing is as follows:

Attorney for the petitioner, Mr. Fischer, placed in evidence as petitioner's Exhibit 1 petitioner's income tax return for the year 1933; as petitioner's Exhibit 2, the minute book of the G. W. G. Corporation; for which there were substituted by agreement as petitioner's Exhibit 2-a, certified copy of the minutes of the meeting of the Board of Directors of the G. W. G. Corporation of January 10, 1933; as petitioner's Exhibit 2-b, certified copy of the minutes of the meeting of the Board of Directors of the G. W. G. Corporation of January 11, 1933; as petitioner's Exhibit 2-c, certified copy of the minutes of the meeting of the Board of Directors of the G. W. G. Corporation of January 18, 1933; and as petitioner's Exhibit 3, release to Robert Lay, dated January 11, 1933.

Thereupon the petitioner herein, George W. Griffiths, took the stand as a witness in his own behalf.

Testimony of MR. GRIFFITHS:

"I own all of the stock of G. W. G. Corporation and have owned it since its formation. I had had in mind the forming of such a corporation over a period of some time; having had considerable to do with the John Griffiths Investment Trust, I was a little familiar with such corporations and at the time this matter came up, this settlement with Lay, I discussed it with Mr. Markheim.

"The settlement with Lay grew out of the purchase of stock of the Cemetery Association. I paid a total sum of $100,000 for stock of the Oakridge Cemetery Company about 1927. I was induced to purchase this stock by Mr. Lay. A controversy arose with Mr. Lay in December, 1932, or early part of January, 1933. An individual came to me and informed me that Mr. Lay had misrepresented the facts at the time he advised or induced me to purchase this stock. I consulted Mr. Harry Markheim, an attorney, who was practicing law in Chicago.

41

"The formation of such a corporation as G. W. G. Corporation came up at the time Mr. Markheim was representing me in connection with my claim of liability to me of Mr. Lay. Mr. Markheim told me that it would delay the payment of taxes; that he had handled a similar matter practically the same as mine, and that the matter he

had handled had gone through the Internal Revenue Department and there had been no question raised about it. The matter he referred to had been handled some two or three years previously. He told me that it was perfectly legal, and that it was all right, and on his advise I formed this corporation. Mr. Markheim took charge of forming the corporation and prepared the agreements and resolutions.

"I told him that The John Griffiths Investment Trust owned that stock; that I had sold it to the Investment Trust in, I believe, 1931. He told me that in order to clean it up I should buy the stock back from the Investment Trust because of my right of action against Lay, and I believe Lay's attorney wanted it that way because the Investment Trust only had the stock and I had the right of action. Following this conference with Mr. Markheim I purchased stock from the Investment Trust. I paid approximately $8,000.00 for it. This was on January 10, 1933. At the suggestion of Mr. Markheim, Mr. Arthur Wells and my daughter were made directors of the corporation, although I have a faint recollection that prior thereto there were other directors temporarily. The minutes of the meeting of January 10th show that the directors present were Messrs. Albie, Mallen, and Wallbaum.

"Mr. Albie was the partner of Mr. Markheim and the others, I think one of them is an attorney in the office and the other an employee.

"At the meeting of January 10, 1933, there was an
42 agreement made between the G. W. G. Corporation signed by Mr. Albie as president and myself. Soon thereafter the controversy with Mr. Lay was settled. The controversy with Mr. Lay was settled about the 11th or 12th of January. In that settlement two checks were paid by Mr. Lay, one for $100,000.00 and one for $80,000.00. The $100,000.00 check was deposited to the account of the G. W. G. Corporation in the National Builders' Bank on January 12, 1933. On G. W. G. Corporation's contract I subsequently, and during the year 1933, received two payments amounting to $1,125.00 and $1,000.00. In accordance with the G. W. G. Corporation contract with Lay which is related as part of the minutes of the corporation, these payments were received for those due in January, 1933. On December 5, 1933, I received $1,243.13 more. That was for interest."

(At this point there was offered in evidence the first page of the bank book showing the deposits of the G. W. G.

Corporation with the National Builders' Bank of Chicago as PETITIONER'S EXHIBIT 4.)

"As a result of a conversation with Mr. Markheim, corporate books were obtained. During 1933 the G. W. G. Corporation made further investments in securities."

(Thereupon a memorandum showing such purchases of securities were made by G. W. G. Corporation in the year 1933, and the subsequent disposal of such of the securities purchased in that year as had been disposed of, was received in evidence as PETITIONER'S EXHIBIT 5.)

On cross-examination MR. GRIFFITHS testified as follows:

"I had a talk with Mr. Markheim about the first of January, 1933; it was after I believed he was going to settle the controversy with Mr. Lay. I was aware at that time I had already sold this stock in 1931 to the Griffiths' Trust and had the benefit of a loss of $92,500.00. In 1933 I think I was in the higher income brackets; I don't remember. I paid $1,000 for the G. W. G. Corporation stock. It was the only asset the G. W. G. Corporation had until it obtained the stock of the Oakridge Cemetery Corporation and then the G. W. G. Corporation issued its obligations to me for $85,000.00. All the assets that the G. W. G. Corporation had was $1,000.00 together with
43 its right against Mr. Lay which I expected was coming in immediately in cash. It came in on the 11th. The first meeting of the stockholders was held in Chicago. I did not have a great deal to do with the meetings as Markheim was handling that and I accepted his advice because he told me he had had a similar case which was put through the Bureau and approved."

HARRY MARKHEIM was called to the stand as a witness on behalf of the petitioner and he testified as follows:

"I am an attorney at law, a member of the firm of Markheim, Parker, and Mueller, of Chicago, Illinois. I have been engaged in the practice of law upwards of twenty-four years. In 1932 I was employed by George Griffiths in connection with some transaction in which Mr. Lay had participated. I later, at the end of 1932, began negotiations with Mr. Lay or his representatives. I had a conversation with Mr. Griffiths with respect to forming an investment company on January 9, 1933. This con-

versation included reference to stock of the Oakridge Cemetery Corporation which was then owned by the John Griffiths Investment Trust. This conversation was at No. 1 North LaSalle Street. Mr. Griffiths and myself were present. In this conversation I stated to Mr. Griffiths that in my judgment the controversy with Lay would be settled within the next two or three days. He previously had informed me that a portion of his stock, I believe it was 5,000 shares, in the Oakridge Cemetery Company had been sold to the John Griffiths Investment Trust. I told Mr. Griffiths that our rights against Lay consisted of a cause of action involving a breach of trust in the general nature of a tort claim, and that in order to effect the settlement it would be necessary to unite the ownership of the stock and the tort claim, or claim for breach of trust, in the same person. I therefore told him it would be essential for him to reacquire the stock that had been sold to the John Griffiths Investment Trust, and he said he would. I then stated to him that if he would consider
organizing an investment company, a personal hold-
44 ing company at that time, that in my judgment his
tax situation could be improved in connection with the impending settlement with Robert Lay by placing it on an installment basis and thus spreading it over a period of years. I explained to him that that benefit was subject to some question because it depended a good deal on how long he lived and what his income might be in succeeding years, and in what bracket he might be, and what the levy of taxes might be in the future years. He asked me if I thought that procedure was all right and would be effective. I told him in my best judgment it would be effective, and I told him about a case I had involving a tax return or transaction in the year 1929 involving a very much bigger transaction and a very much larger tax, in which the matter had been examined by the Department of Internal Revenue and approved.

"We discussed who the directors of the corporation should be, and I suggested in the previous case I had had involving a similar situation the man's initials had been used, and I suggested that he organize the G. W. G. Corporation. I told him that for the purpose of convenience and facility, if he would place that responsibility or confidence in my associates, we would supply the directors at least temporarily. I stated to Mr. Griffiths in my judgment it would not be necessary under the Illinois statute to qualify the company in Illinois for the purpose of consummating the transaction as between himself and the

corporation, or the transaction between the corporation and Lay, because it was an isolated transaction and not within the purview of the Illinois Statute requiring qualification, but he told me he intended to employ this corporation actively and continually over a period of time involving other transactions, and I told him I thought it would eliminate any question if we qualified in Illinois, and he instructed me to do that in due course.

"The bulk of the work of obtaining the charter and holding meetings of directors was done by my partners Milton Mullen and S. J. Albie. I instructed them to secure a charter and have it organized by sending instructions by telegraph or long distance telephone, as we had done in the A. S. W. Corporation, as a charter of the G. W. G. Corporation. The Corporation Trust Company attended to the portion of the formation of the corporation that transpired in Delaware.

"The first meeting in Illinois was held on January 10, 1933. We were advised early in the morning of January 10th by Mr. Reubling or Mr. Smith the corporate organization had been completed and the board of directors elected. On the afternoon of January 10th the negotiations culminated, although as I have said I was confident the day before we would close; and that afternoon or early in the morning of the 11th I commenced the preparation of the papers to effectuate the settlement with Mr. Kohane of Trude and Kohane, who represented Mr. Lay. Petitioner's Exhibit No. 3 is the document that Mr. Kohane and I prepared at that time. The securities recited in petitioner's Exhibit No. 3 were delivered at that time. I obtained two checks payable to the order of George W. Griffiths, drawn on the Harris Saving & Trust Bank, one in the amount of $100,000 and the other in the sum of $80,000, which I personally delivered to Mr. Griffiths. At that time Mr. Kohane stated that he wanted a resolution sustaining the endorsement in blank of the certificate in the name of John Griffiths Investment Trust for 5,000 shares of the common stock of Oakridge Cemetery Corporation."

(This resolution was thereupon introduced in evidence as PETITIONER'S EXHIBIT NO. 6.)

On cross-examination MR. MARKHEIM testified as follows:

"I contacted Lay or his attorneys in the latter part of 1932. I first approached A. M. Johnson who was the business associate of Lay and then president of the National

Life Insurance Company. Trude and Kohane entered the picture in the early part of January, 1933. Our first contact with an attorney was with Mr. Sors, who was attorney for the National Life Insurance Company, with which Lay was associated and after the meeting with Mr. Sors,
46 Trude and Kohane entered the picture, and I would say that was around the 5th day of January, 1933. I first got the impression that a settlement would be made on the 9th day of January. About the 9th, I was reasonably certain the transaction was going through. It was only a matter of drawing the agreement, subject to the fact they weren't committed in any way. By the afternoon of the 10th it was definitely understood that Lay was going to pay. The order for the corporation was given on the 9th and the organization was completed early on the morning of the 10th. A formal meeting was held first in Delaware about 9 o'clock in the morning, 8 o'clock here, and a meeting was held in our office about 10 o'clock or a little later the same morning. The corporate minutes were ready before that hour to present to the board of directors.

"I have had considerable contact with income tax work but I am not a specialist in the sense that a major portion of my time is devoted to that work. The S. W. A. Corporation was a Delaware corporation and I explained to Mr. Griffiths that the transaction with reference to that corporation was almost identical with this case. It was reviewed and approved."

The foregoing evidence, together with the exhibits above shown to have been introduced in evidence, copies of which exhibits are being incorporated in the record proper by the Clerk of the United States Board of Tax Appeals and are hereby incorporated herein by reference, is all of the material evidence adduced at the hearing before the Board of Tax Appeals and the same is approved by the undersigned, J. P. Wenchel, Chief Counsel for the Bureau of Internal Rvenue, as attorney for the Commissioner of Internal Revenue.

J. P. Wenchel,
J. P. Wenchel,
Chief Counsel, Bureau of Internal Revenue.

The foregoing evidence, together with the exhibits above shown to have been introduced in evidence, copies of which exhibits are being incorporated in the record proper by the Clerk of the United States Board of Tax Appeals
47 and are hereby incorporated herein by reference, is all of the material evidence adduced at the hearing before

the Board of Tax Appeals and the same is approved by the undersigned as attorney for respondent on review.

Herman A. Fischer,
Herman A. Fischer,
Counsel for Respondent on Review.

The foregoing evidence, together with the exhibits above shown to have been introduced in evidence, copies of which exhibits are being incorporated in the record proper by the Clerk of the United States Board of Tax Appeals and are hereby incorporated herein by reference, is all of the material evidence adduced at the hearing and in order that the same may be preserved and made a part of the record, this statement of evidence is duly approved and settled this ..... day of ....., 1938.

.....
Member, United States Board of Tax Appeals.

Approved and ordered filed this 13 day of Aug., 1938.

(s) J. E. Murdock,
Member.

INDIVIDUAL INCOME TAX RETURN

FOR NET INCOMES FROM SALARIES OR WAGES OF MORE THAN $3,000
AND INCOMES FROM BUSINESS, PROFESSION, RENTS, OR SALE OF PROPERTY

For Calendar Year 1933

File This Return With the Collector of Internal Revenue for Your District on or Before March 15, 1934

FIRST NAME AND ADDRESS PLAINLY BELOW

GEORGE W. GRIFFITHS.
(Name)

Room 624 - 228 North La Salle Street.
(Street and number, or rural route)

Chicago. (Post office) Cook (County) Illinois (State)

Do Not Write in These Spaces

File No. 1124

Serial No. 801452

Date (Collector's Stamp)

Cash Check M.O. Certified

First Payment $ 12-9-13

1. Are you a citizen or national? Yes
2. If you are a citizen by virtue of naturalization, where was your certificate issued? —
3. If you are a citizen other than by birth or naturalization, how did you become a citizen? —
4. Give name of husband or wife; Ida S. Griffiths
Husband's address at which you were Chicago, Ill.
5. Were you married and living with husband or wife during your taxable year? Yes
6. If not, were you living apart because of separation decree or written agreement? —
7. How many dependent persons under ten years of age or incapable of self-support received over one-half support from you during your taxable year? One
8. Are you claiming credit for any amount paid to a dependent in connection with the support of a child? —
9. If answer to question 8 is "Yes", give name and address of person to whom you paid such amount. —
10. If answer to question 8 is "Yes", state amount paid during the year, date and amount of each payment, and whether paid in cash or by check. —
11. Amount of personal exemption claimed: no change
12. Basis on which your books are kept: Cash

Occupation: Classification of Item 1, Schedule B: (Check one box only.)
- ☐ Agriculture, stockman, or dairyman
- ☐ Judge or lawyer
- ☐ Technical engineer, chemist, or architect
- ☐ Other professional
- ☐ All other
- ☐ Manufacturer, or other producer
- ☐ Merchant
- ☐ Corporation executive, or manager
- ☐ Clerk, salesman, or employee

INCOME				
1. Salaries, Wages, Commissions, Fees, etc. (State name and address of employer)	Amount received	Income not included in Schedule B		
Salaries and Commissions (Exhibit "A"-1)		14	358	99
2. Income (or Loss) from Business or Profession (From Schedule A)				
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (except tax-free covenant bonds)		1	436	15
4. Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source			2424	
5. Income (or Loss) from Partnerships, Syndicates, Pools, etc. (State name, address, and kind of business)				
6. Income from Fiduciaries (State name and address)				
(Exhibit "C")			360	91
7. Rents and Royalties (From Schedule B)				
(a) Profit from Sale of Stocks and Bonds held over two years (From Schedule C (a)) (Exhibit "D")		19	251	56
(b) Profit or Loss from Sale of Other Assets held over two years (From Schedule C (b))				
(c) Profit or Loss from Sale of Capital Assets (If not reported on Item 20). (From Schedule C (c))				
(Exhibit "E")				
8. Dividends on Stock of: (a) Domestic Corporations subject to taxation under Title I of this Act		26	628	92
(b) Domestic Corporations not subject to taxation under Title I of 1932 Act				
(c) Foreign Corporations				
9. Other Income. (State source) (Use separate schedule, if necessary) Instalment Sale (Exhibit "F")		1	875	00
10. Total Income as Items 1 to 11				113 373 18
DEDUCTIONS				
13. Interest Paid			735	53
14. Taxes Paid. (Explain in Schedule B) (Exhibit "G")		2	169	47
15. Losses by Fire, Storm, etc. (Explain in Table at foot of page 2) (Exhibit "H")		19	085	00
16. Bad Debts. (Explain in Schedule B) (Exhibit "I")		48	706	81
17. Contributions. (Explain in Schedule B) (Exhibit "J")		3	692	68
Other Deductions Authorized by Law. (Explain in Schedule B) (Exhibit "K")		3	107	52
Total Deductions as Items 13 to 18				69 436 82
20. Net Income (Item 19 minus Item 19)				43 936 36

AVERAGE BENEFICIARY SERVICE

ATTACH REMITTANCE HERE

INCOME

1. Salaries, Wages, Commissions, Fees, etc. (State name and address of employer)				
Salaries and Commissions (Exhibit "A-1")		14	358	99
2. Income (or Loss) from Business or Profession. (From Schedule C)				
3. Interest on Bank Deposits, Notes, Corporation Bonds, etc. (Except Tax-free Covenant Bonds)		1	436	15
4. Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source			24	
5. Income (or Loss) from Partnerships, Syndicates, Pools, etc. (State name, address, and kind of business)				
6. Income from Fiduciaries. (State name and address)				
(Exhibit "C")			360	91
7. Rents and Royalties. (From Schedule D)				
(a) Profit from Sale of Stocks and Bonds held one year or less. (From Schedule C (2)) (Exhibit "D")		19	257	56
(b) Profit or Loss from Sale of Other Assets held one year or less. (From Schedule C (2))				
(c) Profit or Loss from Sale of Capital Assets (if not reported on Item 20). (From Schedule C (2))				
(Exhibit "E")				
9. Dividends on Stock of: (a) Domestic Corporations subject to taxation under Title I of 1932 Act.		76	628	92
(b) Domestic Corporations not subject to taxation under Title I of 1932 Act.				
(c) Foreign Corporations.				
10. Other Income. (State nature) (Use separate schedule, if necessary) Instalment Sale (Exhibit "F")		1	875	00
11. TOTAL INCOME IN ITEMS 1 TO 11.				133 373 18
DEDUCTIONS				
12. Interest Paid.			735	53
14. Taxes Paid. (Explain in Schedule E) (Exhibit "G")		2	169	47
15. Losses by Fire, Storm, etc. (Explain in Table at foot of page 4) (Exhibit "H")		19	085	00
16. Bad Debts. (Explain in Schedule E) (Exhibit "I")		48	706	81
17. Contributions. (Explain in Schedule E) (Exhibit "J")		3	692	48
Other Deductions Authorized by Law. (Explain in Schedule E) (Exhibit "K")		3	107	52
TOTAL DEDUCTIONS IN ITEMS 12 TO 18.				69 436 82
20. NET INCOME (Item 19 minus Item 19)				43 936 36

COMPUTATION OF TAX (See Instruction 28)

21. Net Income Subject to Tax (Item 20 above)			43	936	36		
22. Less: Interest on Liberty Bonds, etc. (Item 9)							
23. Dividends (Item 9 (a))	76,628	92					
24. Personal Exemption	2,500	00					
25. Credit for Dependents	400	00					
26. Total of Items 22 to 25			79	528	92		
27. Balance subject to Normal Tax (Item 21 minus 26)				NONE		21. Normal Tax (4% of Item 27)	NONE
28. Amount taxable at 4% (not over $4,000)				NONE		22. Normal Tax (8% of Item 28)	NONE
29. Amount taxable at 8% (Item 27 minus 28)				NONE		23. Surtax on Item 20 (see instruction 28)	3 687 91
30. Amount of Capital Net Gain or Loss (if any reported on Item 8 (c)) (From Schedule C (2)) Exhibit "L"			19	585	43	24. Tax on Net Income (total of Items 21 to 23)	
						25. Adjustment for Capital Gain or Loss (12½% of Item 30)	2 448 18
						26. Total Tax (total of or difference between Items 24 and 25)	
						27. Less: Income Tax Paid at Source (3% of Item 6)	
						28. Income Tax Paid to a foreign country or U.S. possession	
						29. Balance of Tax (Item 26 minus Items 27 and 28)	1 239 73

AFFIDAVIT

I swear (or affirm) that this return, including the accompanying schedules and statements, has been examined by me, and to the best of my knowledge and belief is a true and complete return, made in good faith, for the taxable year stated, pursuant to the Revenue Act of 1932 and the National Industrial Recovery Act and the Regulations issued thereunder.

(See Instruction 27) (If return is made by fiduciary, affidavit must be sworn to on this line)

Sworn to and subscribed before me this 15th day of February 1934

Anna Keene Notary Public

(Signature of officer administering oath)

MY COMMISSION EXPIRES

(Address of agent)

An amended return must be marked "Amended" at top of page 1, 1933 credits and drafts will be accepted only if payable at par.

23

2-1

SCHEDULE A—INCOME (OR LOSS) FROM BUSINESS OR PROFESSION (See Instruction 2)

1. Total receipts from business or profession (state kind of business)

Cost of Goods Sold

2. Labor
3. Material and supplies
4. Merchandise bought for sale
5. Other costs (itemize below or on separate sheet)
6. Plus inventory at beginning of year
7. Total (Lines 2 to 6)
8. Less inventory at end of year
9. Net Cost of Goods Sold (Line 7 minus Line 8)

Enter "C", or "C or M", on Lines 6 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.

Other Business Deductions

10. Salaries not included as "Labor" in Line 2 (do not deduct compensation for your services)
11. Interest on business indebtedness to others
12. Taxes on business and business property
13. Losses (explain in table at foot of page)
14. Bad debts arising from sales or services
15. Depreciation, obsolescence, and depletion (explain in table provided at foot of page)
16. Rent, repairs, and other expenses (itemize below or on separate sheet)
17. Total (Lines 10 to 16)
18. Total Deductions (Line 9 plus Line 17)
19. Net Profit (or Loss) (Line 1 minus Line 18) (Enter as Item 2)

Explanation of deductions claimed on Lines 5 and 16

SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 7)

1. Kind of Property	2. Amount Received	3. Cost or Value as of March 1, 1913, Whichever Greater	4. Depreciation (Explain in table at foot of page)	5. Remarks	6. Other Expenses (Itemize below)	7. Net Profit (Enter as Item 7)

Explanation of deductions claimed in Column 6

SCHEDULE C—PROFIT OR LOSS FROM SALE OF STOCKS, BONDS, REAL ESTATE, ETC. (See Instruction 8)

1. Kind of Property	2. Date Acquired (Mo. Day Year)	3. Date Sold (Mo. Day Year)	4. Amount Realized	5. Cost	6. March 1, 1913, Value if Acquired Prior to That Date	7. Cost of Improvements Subsequent to Acquisition or March 1, 1913	8. Depreciation Allowed (or Allowable) Since Acquisition or March 1, 1913	9. Net Profit or Loss
(a) Stocks and Bonds* Held Two Years or Less:								
						x x x x x x	x x x x x x	
						x x x x x x	x x x x x x	
Total (a) (Transfer net profit to Item 8 (a))	x x x x x x	x x x x x x				x x x x x x	x x x x x x	
(b) Other Assets Held Two Years or Less:								
Total (b) (Transfer net profit or loss to Item 8 (b))	x x x x x x	x x x x x x						
(c) Capital Assets:								
Total (c) (Transfer net gain or loss to Item 8 (c) or 20)	x x x x x x	x x x x x x						

* As defined in Section 22 (t), 1932 Act.

State how property was acquired

SCHEDULE D—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 9)

1. Obligations or Securities	2. Amount Owned	3. Interest Received or Accrued	4. Principal Amount Exempt from Taxation	5. Amount Owned in Excess of Exemption	6. Interest on Amount in Excess of Exemption (Enter as Item 4)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia			All	x x x x x x	x x x x x x
Securities issued under Federal Farm Loan Act, or under such Act as amended, and obligations of United States possessions			All	x x x x x x	x x x x x x
Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917			All	x x x x x x	x x x x x x
(d) Liberty 4% and 4½% Bonds and Treasury Bonds			$5,000		
(e) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness			All	x x x x x x	x x x x x x

SCHEDULE E—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 14, 15, 17, AND 18

SCHEDULE C—PROFIT OR LOSS FROM SALE OF STOCKS, BONDS, REAL ESTATE, ETC. (See Instruction E)

1. Kind of Property	2. Date Acquired	3. Date Sold	4. Amount Realized	5. Cost	6. March 1, 1913, Value if Acquired Prior to That Date	7. Cost or Appropriate Adjustment on March 1, 1913	8. Depreciation Allowed (or Allowable) Since Acquisition on March 1, 1913	9. Net Profit or Loss
(a) Stocks and Bonds* Held Two Years or Less:	Mo. Day Year	Mo. Day Year						
			$	$	$	xxxxx	xxxxx	$
						xxxxx	xxxxx	
Total (a) (Transfer net profit to Item 8 (a))	xxxxx	xxxxx	$	$	$	xxxxx	xxxxx	$
(b) Other Assets Held Two Years or Less:								
			$	$	$	$	$	$
Total (b) (Transfer net profit or loss to Item 8 (b))	xxxxx	xxxxx	$	$	$	$	$	$
(c) Capital Assets:								
			$	$	$	$	$	$
Total (c) (Transfer net gain or loss to Item 8 (c) or 20)	xxxxx	xxxxx	$	$	$	$	$	$

*As defined in Section 23 (t), 1932 Act.
State how property was acquired

SCHEDULE D—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 9)

1. Obligations or Securities	2. Amount Owned	3. Interest Received or Accrued	4. Interest Amount Exempt from Taxation	5. Amount Owned, as Shown on Statement	6. Interest on Amount in Excess of Bonds (Same as Item 9)
(a) Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia	$	$	All	xxxxxx	xxxxxx
Securities issued under Federal Farm Loan Act, or under such Act as amended, and obligations of United States possessions			All	xxxxxx	xxxxxx
Liberty 3½% Bonds and other obligations of United States issued on or before September 1, 1917			All	xxxxxx	xxxxxx
(d) Liberty 4% and 4½% Bonds and Treasury Bonds			$5,000	$	$
(e) Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness			All	xxxxxx	xxxxxx

SCHEDULE E—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 14, 16, 17, AND 18

EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED IN SCHEDULES A AND B

1. Kind of Property (If buildings, state material of which constructed)	2. Date Acquired	3. Cost or Value	4. Proportion Cost Applicable to Buildings	5. Cost (Exclusive of Land)	6. March 1, 1913, Value (If Acquired Prior to That Date) (Exclusive of Land)	7. Depreciation Allowed (or Allowable) on Prior Years	8. Depreciation Allowable this Year
				$	$	$	$

EXPLANATION OF DEDUCTION FOR LOSSES BY FIRE, STORM, ETC., CLAIMED IN SCHEDULE A AND IN ITEM 15

1. Kind of Property	2. Date Acquired	3. Cost or Value as of March 1, 1913, Whichever Basis	4. Insurance Compensation	5. Depreciation Allowable Since Acquisition	6. Unadjusted Adj. Salvage Value	7. Deductible Loss
		$	$	$	$	$

RECEIVED
JUL 7 1934
Internal Revenue Agent in Charge
CHICAGO, ILLINOIS

24-25

25

50 **EXHIBIT "A".**

George W. Griffiths
228 North La Salle Street
Chicago, Illinois

Statement Showing Automobile Expenses Paid During Year Ended December 31, 1933.

(1) Salary of Chaffeur, Repairs, Supplies, Expense, Insurance, Etc.	$4,638.17
(2) Employed For Business 50%	$2,319.09

51 **EXHIBIT "A"-1.**

George W. Griffiths
228 North La Salle Street
Chicago, Illinois

Statement Showing Salaries, Wages, Commissions, Etc.

(1) Salary John Griffiths & Son Company, 228 North La Salle Street, Chicago, Illinois,	$10,000.00
Less:	
(2) Auto Expenses (Exhibit "A")	2,319.09
(3) Net Salary	$ 7,680.91
(4) Commissions John Griffiths & Son Company, (Exhibit "B")	9,321.92
(5) Salary G. W. G. Corporation, 228 North La Salle Street, Chicago, Illinois,	10,000.00
(6) Salary John Griffiths Investment Trust, 228 North La Salle Street, Chicago, Illinois,	6,000.00
(7) Total	$14,358.99

52 **EXHIBIT "B".**

George W. Griffiths
228 North La Salle Street
Chicago, Illinois

Statement Showing Commissions.

(1)	Net Profit on Jobs Fiscal Year Ended July 31, 1933	$179,852.60
	Less:	
(2)	Administrative Expenses	211,184.07
(3)	Income for Commissions	$ 31,331.47
(4)	Commissions of George W. Griffiths	$ 9,321.92

53 **EXHIBIT "C".**

George W. Griffiths
228 North La Salle Street
Chicago, Illinois

Statement Showing Rents Received

(1)	Rents Received 3848 North Nordica Avenue, Chicago, Illinois		$ 27.50
	Less:		
(2)	Expenses For Decorating, Repairs, Etc.	$243.66	
(3)	Depreciation on Cost, 3% X $4,825.00	144.75	388.41
(4)	Net Loss		$360.91

54 **EXHIBIT "D."**

George W. Griffiths
228 North La Salle Street
Chicago, Illinois

Statement Showing Gain or Loss on Sale of Securities Year Ended December 31, 1933.
(Held Two Years or Less)

Kind of Property	Date Acquired	Date Sold	Amount Realized	Cost	Net Profit	Net Loss
(1) E. I. Du Pont De Nemour Common Stock (300 Shares)	4-28-33	9-22-33	$24,824.15	$	$	$
(2) E. I. Du Pont De Nemour Common Stock (200 Shares)		11-23-33	17,550.00	23,075.00	19,299.15	—
(3) United States Treasury Bills	3-1-33	3-15-33	54,950.35	54,997.94	—	47.59
(4) Totals			$97,324.50	$78,072.94	$19,299.15	$47.59
(5) Forwarded					47.59	
(6) Net Profit					$19,251.56	

55 **EXHIBIT "E".**

George W. Griffiths
228 North La Salle Street
Chicago, Illinois

Statement Showing Dividends Received Year Ended December 31, 1933

(1)	E. I. Du Pont De Nemour Common Stock	$ 731.42
(2)	General Electric Common Stock	97.50
(3)	John Griffiths & Son Company	55,800.00
(4)	G. W. G. Corporation	20,000.00
(5)	Total Dividends Received	$76,628.92

56 **EXHIBIT "F".**

George W. Griffiths
228 North La Salle Street
Chicago, Illinois

Statement
Showing
Sale of Personal Property on Instalment Basis Held Less Than Two Years

(1)	5,000 Shares Oakridge Cemetery Corporation Common Stock Purchased at Cost of	1/10-33	$ 8,000.00
(2)	Sold on Instalment Basis For Gross Price of	$85,000.00	
	Less:		
(3)	Legal Fees	2,000.00	
(4)	Net Selling Price on Instalment Basis		83,000.00
(5)	Gross Unrealized Profit		$75,000.00
(6)	Amount Received in 1933		$ 2,125.00
(7)	Amount to be Reported in 1933— $75,000.00 / $85,000.00 X $2,125.00=		$ 1,875.00

57 **EXHIBIT "G".**

George W. Griffiths
228 North La Salle Street
Chicago, Illinois

Statement
Showing
Taxes Paid

(1)	Club Taxes	$ 195.42
(2)	City and State Taxes	574.18
(3)	Federal Tax on Checks	14.15
(4)	Real Estate Taxes	326.32
(5)	Stamp Taxes	59.40
(6)	Dividend Tax	1,000.00
(7)	Total	$2,169.47

EXHIBIT "M"

[redacted]

---oOo---

STATEMENT
SHOWING

---oOo---

LOSS FROM WORTHLESS SECURITIES

			Cost
(1)	S. W. Straus & Company	100 Shares	$ 5,675.00
(2)	S. W. Straus Investing Corporation	200 Units	11,600.00
(3)	Midas Oil Company		50.00
(4)	Chicago Yacht Club Underwriting		1,250.00
(5)	T o t a l		$18,575.00

EXHIBIT "K"

GEORGE T. GRIFFITHS
228 NORTH LA SALLE STREET
CHICAGO, ILLINOIS

—ooOoo—

STATEMENT
SHOWING

—ooOoo—

BAD DEBTS

(1)	Louis C. Joyce		$22,793.99
(2)	Carlton F. Perry		150.00
(3)	Charles F. Van Sicklen		3,000.00
(4)	Joseph F. Hill		1,000.00
(5)	Raymond D. Smith		600.00
(6)	Prindle and Whitely		11,162.82
(7)	T o t a l		$40,706.81

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EXHIBIT "J".

George W. Griffiths
228 North La Salle Street
Chicago, Illinois

Statement
Showing
Donations

(1)	Chicago Heart Association	$ 2.00
(2)	The Racquet Club	100.00
(3)	Kenwood Lodge Masonic Order	.50
(4)	St. Lukes Hospital	7.00
(5)	Church Agency	226.00
(6)	Thru John Griffiths & Son Company—49% X $6,851.00—	3,356.99
(7)	Total	$3,692.49

EXHIBIT "I"

GEORGE W. GRIFFITHS
228 NORTH LA SALLE STREET
CHICAGO, ILLINOIS

---oo0oo---

STATEMENT
SHOWING

---oo0oo---

OTHER EXPENSES

(1) Legal and Accounting $2,601.52

(2) Life Insurance Premiums Paid on the Life of a Debtor 506.00

(3) Total Other Expenses $3,107.52

62 **EXHIBIT "L".**

George W. Griffiths
228 North La Salle Street
Chicago, Illinois

Statement
Showing
Gain or Loss on Sale of Securities Year Ended December 31, 1933 (Held More Than Two Years)

Kind of Property	Date Acquired	Date Sold	Amount Realized	Cost	Net Profit	Net Loss
(1) Oakridge Abbey Common Stock (250 Shares)	1925) and 1926)	1-10-33	$52,947.13	$68,750.00	—	$15,802.87
(2) Oakridge Cemetery Corporation (4,250 Shares)						
(3) Chicago Corporation Common (100 Shares)	9-7-29	12-27-33	217.46	4,000.00	—	3,782.54
(4) Totals			$53,164.59	$72,750.00	—	$19,585.41

63 Notice to Individual Taxpayers

George W. Griffiths,
228 N. La Salle St.,
Chicago, Illinois.

This form should be executed and filed as a part of Individual Income Tax Form 1040 for the calendar year 1933. If you merely received advice from some person or persons employed to assist in the preparation of the return, the name and address of your advisor, together with a statement showing the extent to which such assistance or advice was received, is sufficient. If your return was actually prepared by any such person or persons, this form must be signed and sworn to by such person or persons.

Did you employ anyone especially to prepare or advise in the preparation of your income return for the calendar year 1933? (Answer "yes" or "no") No. If so, give

name and address of such person or persons and state to what extent such assistance or advice was received:

I, acting as Advisor (full time employee) for the hereto
(Attorney or advisor)

subscribed taxpayer, affirm that I prepared the return, that the information set out in the return and accompanying schedules, if any, correctly and truly represents the information furnished or discovered by me during the course of preparation of the return, and that such information is true to the best of my information and belief.

David Wyland
David Wyland
(Attorney or advisor)
Rm. 624—228 N. La Salle St.,
Chicago, Illinois.
(Address)

Sworn to and subscribed before me this 15th day of February, 1934.

Clarence V. Reeves,
(Signature of officer administering oath)
(Notarial Seal) *Notary Public.*
(Title)

My Commission Expires April 18, 1936.

Form 1099
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

INFORMATION RETURN FOR CALENDAR YEAR 1933

INSTRUCTIONS TO PAYORS

Prepare one of these forms for each payee in accordance with the instructions on return Form 1096.

Forward with return Form 1096 to reach the Commissioner of Internal Revenue, Sorting Section, Washington, D. C., on or before February 15, 1934.

To Whom Paid (Name and address): George W. Griffiths, 1500 Lake Shore Drive, Chicago, Illinois

Kind and Amount of Income Paid				
Salaries, Wages, Fees, Commissions, Bonuses (If single $1,500 or more, if married $2,500 or more)	Interest on Notes, Mortgages, etc. (If single $1,000 or more, if married $2,500 or more)	Rents and Royalties (If single $1,000 or more, if married $2,500 or more)	Dividends ($100 or more)	Foreign Items and Other Income (If single $1,000 or more, if married $2,500 or more)
$10,000.00	$	$	$55,300.00	

Check if possible
☐ SINGLE
☑ MARRIED

By Whom Paid (Name and address): JOHN GRIFFITHS & SON CO., 228 N. La Salle Street, CHICAGO, ILL.

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Form 1099
TREASURY DEPARTMENT
Internal Revenue Service

INFORMATION RETURN FOR CALENDAR YEAR 1933

INSTRUCTIONS TO PAYORS

Prepare one of these forms for each payee in accordance with the instructions on return Form 1096.

Forward with return Form 1096 to reach the Commissioner of Internal Revenue, Sorting Section, Washington, D. C., on or before February 15, 1934.

To George W. Griffiths,
WHOM PAID (Name and address) 228 North La Salle Street,
Chicago, Illinois.

KIND AND AMOUNT OF INCOME PAID

Salaries, Wages, Fees, Commissions, Bonuses (If single $1,000 or more, if married $2,500 or more)	Interest on Notes, Mortgages, etc. (If single $1,000 or more, if married $2,500 or more)	Rents and Royalties (If single $1,000 or more, if married $2,500 or more)	Dividends ($100 or more)	Foreign Items and Other Income (If single $1,000 or more, if married $2,500 or more)
$ 10,000.00	$ 1,243.13	$	$ 20,000.00	$ 2,125.00

Check if payable
☐ SINGLE
☒ MARRIED

BY WHOM PAID (Name and address) G. W. G. Corporation,
228 North La Salle Street, (Room 624)
Chicago, Illinois.

(3—1933) . . . . . GOVERNMENT PRINTING OFFICE: 1933

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Form 69
TREASURY DEPARTMENT
Internal Revenue Service

INFORMATION RETURN FOR CALENDAR YEAR 1933

INSTRUCTIONS TO PAYORS

Prepare one of these forms for each payee in accordance with the instructions on return Form 1096.

Forward with return Form 1096 to reach the Commissioner of Internal Revenue, Sorting Section, Washington, D. C., on or before February 15, 1934.

To Whom Paid (Name and address)	George M. Griffiths, Room 624 - 228 North La Salle Street, Chicago, Illinois.

Kind and Amount of Income Paid

Salaries, Wages, Fees, Commissions, Bonuses (If single $1,500 or more, if married $2,500 or more)	Interest on Notes, Mortgages, etc. (If single $1,000 or more, if married $2,500 or more)	Rents and Royalties (If single $1,000 or more, if married $2,500 or more)	Dividends ($100 or more)	Foreign Items and Other Income (If single $1,000 or more, if married $2,500 or more)
$ 6,000.00 Check if possible ☐ SINGLE ☒ MARRIED	$	$	$	$

By Whom Paid (Name and address)	The John Griffiths Investment Trust, 228 North La Salle Street, Chicago, Illinois.

45

45

67 Return of Information

By Brokers and Other Agents—Calendar Year 1933

Form 1100
Treasury Department
Internal Revenue Service

Name and address of guarantor of account:

Names and addresses of others with power to make withdrawals of cash, securities, or commodities from the account:

Instructions

Prepare this form in accordance with the instructions on return Form 1100-A. Forward with return Form 1100-A to reach the Commissioner of Internal Revenue, Sorting Section, Washington, D. C., on or before February 15, 1934.

Name and address of customer and title of account:
George W. Griffiths
228 N. La Salle St.
Chicago, Ill.

Total purchases, $31,762.50 Total sales, $217.46.

Name and address of broker or agent:
A. D. Plamonedon Jr.
208 S. La Salle St.

68 Return of Information.

By Brokers and Other Agents—Calendar Year 1933

Form 1100
Treasury Department
Internal Revenue Service

Name and address of guarantor of account:
No.

Names and addresses of others with power to make withdrawals of cash, securities, or commodities from the account:
No.

Instructions

Prepare this form in accordance with the instructions on return Form 1100-A. Forward with return Form 1100-A

to reach the Commissioner of Internal Revenue, Sorting Section, Washington, D. C., on or before February 15, 1934.

Name and address of customer and title of account:
Geo. W. Griffiths
228 N. La Salle St.
Chicago, Ill.

Total purchase, $..... Total sales, $24,825.00.

Name and address of broker or agent:
James E. Bennett & Co.
332 S. La Salle St.
Chicago, Ill.

69 E. I. duPont de Nemours & Company
Incorporated

Wilmington, Del. September 15, 1933 No. 19835

Two Hundred Thirty Seven and***
50/100 Dollars*** $237.50
500

George W. Griffiths***
228 N. La Salle St.,
Chicago, Ill.

Common Stock Dividend No. 72.

Paid by check on The Chemical Bank & Trust Co. New York City.

70 PETITIONER'S EXHIBIT 2a.

I, Clarence H. Reeves, do hereby certify that I am the Secretary of G. W. G. Corporation, a corporation organized under the laws of the State of Delaware, and that, as such Secretary, I am in charge of the minutes of its corporate proceedings and of its corporate seal.

And I do hereby further certify that in the minutes of its first meeting its Board of Directors, as contained in the said corporate minute book in my possession, there appears the following:

G. W. G. Corporation.
Minutes of First Meeting of Board of Directors.

* * * *

The first meeting of the Board of Directors of G. W. G. Corporation was held at the office of Markheim and Allie,

Suite 2121, No. 1 North LaSalle Street, in Chicago, Illinois, on January 10, 1933, at 10:45 A. M., Central Standard Time.

There were present:
Stephen J. Allie
Milton Mallin
Edward F. Wallbaum
constituting all of the directors.

* * * * * * Upon motion duly made and seconded, the following resolution was unanimously adopted:

Whereas, George W. Griffiths, of Chicago, Illinois, has offered to sell to this corporation Five Thousand (5,000) shares of the capital stock of Oakridge Cemetery Corporation, an Illinois corporation, and to assign to the corporation any rights he may have against Robert D. Lay to require said Robert D. Lay to purchase said stock, in consideration of the payment to said George W. Griffiths in the sum of Eighty-five Thousand Dollars ($85,000.00), payable in installments over a period of forty (40) years, and the agreement of this corporation to assume and per-
71 form the obligations of said George W. Griffiths to pay E. H. Harrison Fifteen Per Cent (15%) of the net amount of money (after the payment of all expenses) received on the sale of said stock to said Robert D. Lay, in accordance with the draft of agreement hereinafter set forth; and

Whereas, It is the sense of the Directors that this corporation should purchase such stock and the rights of said George W. Griffiths against Robert D. Lay,

Now, Therefore, Be It Resolved, That the President or Vice President of this corporation be and he is hereby authorized, on behalf of this corporation, forthwith to enter into an agreement with said George W. Griffiths, covering the purchase of said shares of stock and the rights of said George W. Griffiths against said Robert D. Lay, as follows, to wit:

This Memorandum of Agreement, Made this tenth day of January, 1933, between George W. Griffiths, of Chicago, Illinois, and G. W. G. Corporation, a Delaware corporation.

Witnesseth:

First: Said George W. Griffiths hereby sells to said G. W. G. Corporation Five Thousand (5,000) shares of the capital stock of Oakridge Cemetery Corporation, an Illinois corporation, and assigns to said corporation any rights

said George W. Griffiths may have against Robert D. Lay to require said Robert D. Lay to purchase said stock, and said G. W. G. Corporation hereby purchases said Five Thousand (5,000) shares of the capital stock of said Oakridge Cemetery Corporation, and hereby agrees to pay therefor the sum of Eighty-five Thousand Dollars ($85,000.00), and to assume and perform the obligations of said George W. Griffiths to E. H. Harrison to pay said E. H. Harrison Fifteen Per Cent (15%) of the amount of money (after the payment of all expenses) received on the sale of said stock to said Robert D. Lay, and in consummation of said sale said George W. Griffiths has, concurrent with the execution hereof, delivered to said corporation, receipt whereof by said corporation is hereby acknowledged, Certificate No. 1003, evidencing Five Thousand (5,000) shares of said stock, standing in the name of John Griffiths Investment Trust, and endorsed by the Trustees of said John Griffiths Investment Trust in blank.

72 Second: Said G. W. G. Corporation agrees to pay said sum of Eighty-five Thousand Dollars ($85,000.00) as follows: The sum of One Thousand Dollars ($1,000.00) concurrently with the execution hereof, receipt whereof is hereby acknowledged; the sum of Eleven Hundred Twenty-five Dollars ($1125.00) on January 15, 1933; and the sum of Twenty-one Hundred Twenty-five Dollars ($2125.00) on the fifteenth day of January of each year thereafter, until said entire sum of Eighty-five Thousand Dollars ($85,000.00) is paid.

Said G. W. G. Corporation further agrees to pay interest on said deferred installments at the rate of Three Per Cent (3%) per annum from the date hereof, payable semi-annually on the fifteenth day of January and the fifteenth day of July in each year on the full amount of the unpaid deferred installments.

In Witness Whereof, the parties have executed this memorandum the day and year first above written.

(Sgd) G. W. Griffiths (Seal)

G. W. G. Corporation,
By Stephen J. Allie,
Its ..... *President.*

(Here are attached $25 of United States documentary stamps, each with the date January 10, 1933 written thereon.)

Upon motion duly made, seconded and carried, it was

Resolved, That the proper officers of this corporation be and they are hereby authorized and directed, on behalf of

this corporation and under its Corporate Seal to make and file such certified report or other instrument as may be required by law to be filed in any state, territory or dependency of the United States, or in any foreign country in which said officers may find it necessary or expedient to file the same to authorize the corporation to transact business in such state, territory, dependency or foreign country.

Upon motion duly made, seconded and carried, it was
73 Resolved, That the Treasurer be and he is hereby authorized to pay all fees and expenses incident to and necessary for the organization of this corporation.

Upon motion duly made, seconded and carried, the meeting adjourned.

In witness whereof I have hereunto subscribed my name as such Secretary and affixed the corporate seal of said corporation this 9th day of February, 1937.

Clarence H. Reeves,
(Seal) *Secretary.*

74 PETITIONER'S EXHIBIT 2b.

I, Clarence H. Reeves, do hereby certify that I am the Secretary of G. W. G. Corporation, a corporation organized under the laws of the State of Delaware, and that, as such Secretary, I am in charge of the minutes of its corporate proceedings and of its corporate seal.

And I do hereby further certify that in the minutes of a meeting of its Board of Directors which was held on January 11, 1933 at ten o'clock A. M., as contained in the said corporate minutes book in my possession, there appears the following:

Minutes of a Special Meeting of the Board of Directors

"A special meeting of the Board of Directors of G. W. G. Corporation was held at the office of the corporation, Suite 624 Number 228 North La Salle Street, in Chicago, Illinois, on January 11, 1933, at 10:00 A. M., pursuant to written waiver of notice of said meeting signed by all of the directors of said corporation:

There were present:

Stephen J. Allie
Milton Mallin
Edward F. Wallbaum

constituting all of the directors."

"Upon motion duly made and seconded, the following resolution was unanimously carried:

Whereas, Robert D. Lay, of Chicago, Illinois, has offered to purchase 5,000 shares of the capital stock of Oakridge Cemetery Corporation, an Illinois Corporation, belonging to this corporation, at the price of $100,000 for said 5,000 shares, payable in cash; and

Whereas, it is the sense of the directors that this corporation should sell such stock;

75 Now, Therefore, Be It Resolved That George W. Griffiths be and he is hereby authorized on behalf of this corporation forthwith to sell 5,000 shares of the capital stock of Oakridge Cemetery Corporation, an Illinois corporation, to Robert D. Lay, for the sum of $100,000, payable in cash, and to deliver unto said Robert D. Lay certificates for said shares of stock upon the receipt of the purchase price, and said George W. Griffiths is hereby authorized to execute said transaction either in his own name or in the name of this corporation, and to do each and every thing which may be necessary or desirable for the purpose of consummating said sale;

Be It Further Resolved that the Treasurer of this corporation be and he is hereby directed to invest the proceeds received from the sale of said stock on behalf of this corporation in accordance with the objects and purposes of this corporation as set forth in its charter.

There being no further business to come before the meeting, upon motion duly made, seconded and carried, the meeting adjourned.

(Sgd) Edward F. Wallbaum,
Secretary.

In Witness Whereof I have hereunto subscribed my name as such Secretary and affixed the corporate seal of said corporation this 9th day of February, 1937.

Clarence H. Reeves,
(Seal) *Secretary.*

76 PETITIONER'S EXHIBIT 2c.

I, Clarence H. Reeves, do hereby certify that I am the Secretary of G. W. G. Corporation, a corporation organized under the laws of the State of Delaware, and that, as such Secretary, I am in charge of the minutes of its corporate proceedings and of its corporate seal.

And I do hereby further certify that in the minutes of a meeting of its Board of Directors which was held on Jan-

uary 18, 1933 at ten o'clock A. M., as contained in the said corporate minutes book in my possession, there appears the following:

Minutes of a Special Meeting of the Board of Directors

"A special meeting of the Board of Directors of G. W. G. Corporation was held at the office of the Company, No. 228 North LaSalle Street, Chicago, Illinois, on January 18, 1933, at 10:00 A. M., pursuant to written waiver of notice of said meeting, signed by all of the directors of said corporation.

There were present:

Stephen J. Allie
Milton Mallin
Edward F. Wallbaum

constituting all of the directors.

Mr. George W. Griffiths, the Treasurer, reported to the Board that he had sold Five Thousand (5,000) shares of the capital stock of Oakridge Cemetery Corporation, an Illinois corporation, to Robert D. Lay, for One Hundred Thousand Dollars ($100,000.00), pursuant to a resolution adopted by the Board of Directors at their meeting held on January 11, 1933, and that pursuant to authority vested in him by the Board in said resolution he had executed said transaction in his own name. He further reported that he had deposited the proceeds of said sale, being the sum of One Hundred Thousand Dollars ($100,000.00), to the account of the company with the National Builders Bank of Chicago.

77 Thereupon, upon motion duly made, seconded and unanimously carried, it was

Resolved, That the sale of Five Thousand (5,000) shares of the capital stock of the Oakridge Cemetery Corporation, belonging to this company, to Robert D. Lay, for the sum of One Hundred Thousand Dollars ($100,000.00), be and the same is hereby approved, and that all of the acts of the Treasurer in consummating said sale be and the same are hereby fully ratified, approved and confirmed as and for the acts of this corporation.

The chairman then advised the Board that the Company had incurred an obligation to E. H. Harrison for Fifteen Per Cent (15%) of the amount of money (after the payment of all expenses) received on the sale of said Five

Thousand (5,000) shares of capital stock of Oakridge Cemetery Corporation to Robert D. Lay.

Thereupon, upon motion duly made, seconded, and unanimously carried, it was

Resolved, That the Treasurer of this corporation be and he is hereby authorized and directed to pay to E. H. Harrison the sum of Fourteen Thousand Five Hundred Sixty-six and 08/100 Dollars ($14,566.08) from the proceeds of the sale of Five Thousand (5,000) shares of the capital stock of Oakridge Cemetery Corporation to Robert D. Lay.

There being no further business to come before the meeting, the meeting thereupon, on motion duly made, seconded and unanimously carried, adjourned.

(Sgd) Edward F. Wallbaum,
Secretary.

In Witness Whereof I have hereunto subscribed my name as such Secretary and affixed the corporate seal of said corporation, this 9th day of February, 1937.

Clarence H. Reeves,
(Seal) *Secretary.*

78 PETITIONER'S EXHIBIT 3.

For and In Consideration of the sum of One hundred eightly thousand dollars ($180,000) paid this day by Robert D. Lay to me, receipt of which is hereby acknowledged by me, I, the undersigned do hereby sell, assign, transfer, convey and deliver to Robert D. Lay, the following stock certificates and promissory notes duly endorsed, and all my right, title and interest in and to the same:

Certificate No. 22 for Two hundred fifty (250) shares of the common stock of Oakridge Abbey, issued to George W. Griffiths, and endorsed in blank.

Certificate No. 1003 for 5,000 shares of the common stock of Oakridge Cemetery Corporation issued to John Griffiths Investment Trust, and endorsed in blank.

Promissory note of Oakridge Cemetery Corporation for Fourteen thousand dollars ($14,000), dated February 11th, 1929, payable on demand and made payable to George W. Griffiths.

Promissory note of Oakridge Cemetery Corporation for Fourteen hundred dollars ($1400), dated August 10th, 1932, due on demand and made payable to George W. Griffiths.

The delivery of which said certificates of stock and promissory notes is acknowledged by the said Robert D. Lay. And I do further sell, assign, transfer and convey to said Robert D. Lay all my right, title and interest in and to Certificate No. 867 for Four thousand two hundred fifty (4,250) shares of the common capital stock of Oakridge Cemetery Corporation issued to George W. Griffiths, which said certificate is now held by National Builders Bank, as security for the payment of certain bonds mentioned in
79 a certain collateral trust agreement between Oakridge Cemetery Corporation and Union Bank of Chicago, under date of February 15th, 1922, as amended, and to evidence said sale, transfer and conveyance of all of the right, title and interest of the undersigned in and to said certificate of stock, the undersigned has, concurrently with the execution hereof, delivered to said Robert D. Lay, an assignment executed by him of all his said right, title and interest in and to said certificate and also a notice to the National Builders Bank, giving notice of the sale, assignment and transfer of said stock certificate and the interest therein of the undersigned, and authorizing and directing the said National Builders Bank to deal with the said Robert D. Lay as the owner of said certificate, the delivery of said assignment and notice being acknowledged by the said Robert D. Lay.

And as part consideration for the payment to the undersigned by the said Robert D. Lay of the said sum of One hundred eighty thousand dollars ($180,000), I, the undersigned, George W. Griffiths, for myself, my heirs, administrators and assigns, do hereby release and forever discharge the said Robert D. Lay, his heirs, executors, administrators and assigns, from all actions, causes of action, contracts, debts, liabilities, obligations, suits, claims and demands whatsoever which I, the undersigned, ever had, now have, or which I, my heirs, executors, administrators or assigns or any of them, hereafter can, shall or may have for or by reason of any act of omission, cause, matter or thing whatsoever, from the beginning of the World to the date hereof.

In Witness Whereof I, the undersigned, George W. Griffiths, have set my hand and seal this 11 day of January, A. D. 1933.

George W. Griffiths (Seal)

State of Illinois }
County of Cook } ss.

I, Milton Mallin, a Notary Public in and for the County and State aforesaid, Do Hereby Certify that George W. Griffiths, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 11th day of January 1933.

Milton Mallin,
Notary Public.

(Seal)

NATIONAL BUILDERS BANK
OF CHICAGO

IN ACCOUNT WITH

G.W.G. Corporation
221 No LaSalle St.
Room 624

In tender of items by the above named depositor, and the Bank's entry covering such items, constitutes an agreement on the part of said depositor: that in receiving items for deposit or collection, this bank acts only as the depositor's collecting agent and assumes no responsibility beyond the exercise of due care; that all items are credited conditionally and subject to final payment in cash or current credit; that cheques collectible through the Chicago Clearing House will be carried over for presentation on the following business day; that this bank will not be liable for default or negligence of its duly selected correspondents nor for items in transit, and each correspondent so selected shall not be liable except for its own negligence; that this bank or its correspondents may send items, directly or indirectly, to any bank including the payor and accept its draft or credit as conditional payment in lieu of cash; and that it may charge back, any items at any time before final payment whether or not the items can be or are returned to the depositor, also any items drawn on this bank not good at close of business on day deposited.

Exhibit No. 4

NATIONAL BUILDERS BANK
OF CHICAGO

1933			
Jan 10			1000 =
1/12			100 000
3/25			50000
4-3-33			30000 -
4/5			50000
9/13			4379 -
			10000
APR 4 1933			8000 -
12-31			1500 -
JAN - 3 1934			1041750
	M.		460415
			4688184
APR - 4 1938		N	750 -
			310 -
DEC 31 1935		N.	1584 -
9/17			100
DEC 19 1936			600 -
DEC 29 1939			7500 -

U. S. BOARD OF TAX APPEALS
DIV. 3 DOCKET 82624
ADMITTED IN EVIDENCE
JUN 24 1937
PETITIONER EXHIBIT 4

52

82 PETITIONER'S EXHIBIT 5.

G. W. G. Corporation

Schedule of Securities Purchased 1933 with Sale Dates.

Name of Security	Number of Shares Purchased	Date Purchased	Number of Shares Sold	Date Sold	Cash	Selling Price	Gain or Loss
Oakridge Cemetery Stock	5000	1-10-33	5000	1-11-33	99,566.08	100,000.00	433.92
National Dairy Products Common Stock	500	4-28-33	500	6-12-33	5,100.00	6,798.00	1,698.00
Union Carbide and Carbon Common Stock	500	4-28-33	500	9-25-33	15,275.00	24,380.00	9,105.00
Eastman Kodak Common Stock	500	4-28-33	500	3-16-34	30,575.00	45,355.00	14,780.00
Youngstown Sheet & Tube Common Stock	1700	6-15-33	1700	12-28-34	52,705.00	31,317.82	21,387.18
Youngstown Sheet & Tube Common Stock	800	6-15-33	800	2-11-35	24,670.00	13,493.71	11,176.29
General Motors Common Stock	1500	4-28-33	1500	2-11-35	26,437.50	44,956.58	18,519.08
Totals					254,328.58	266,301.11	11,972.53
Chapin & Gore Stock	250	10-19-33			25,000.00	This Stock Still Held	

83 PETITIONER'S EXHIBIT 6.

We, the undersigned, John Griffiths and George W. Griffiths, the qualified and acting Trustees of the John Griffiths Investment Trust, do hereby certify that certificate No. 1003 for five thousand (5,000) shares of the capital stock of Oakridge Cemetery Corporation, an Illinois corporation, standing in the name of John Griffiths Investment Trust, was duly endorsed in blank by John Griffiths and George W. Griffiths, as Trustees of said John Griffiths Investment Trust, pursuant to a resolution of said trust adopted by the concurrence of both of the Trustees thereof, in accordance with the requirements of the instrument creating the trust.

Dated at Chicago, Illinois, January 11th, 1933.

John Griffiths,
Geo. W. Griffiths,
Trustees of said John Griffiths Investment Trust.

Filed Feb. 9, 1938. 19 UNITED STATES BOARD OF TAX APPEALS.

• • (Caption—82624) • •

Promulgated February 9, 1938.

A taxpayer, after being allowed a deduction in a prior year for a loss on the sale of stock, learned in a later year that he could recover his loss from the person who had sold the stock to him because of some representation made at that time. He then reacquired the stock in anticipation of the settlement. But before the settlement was actually entered into, he sold the stock and the cause of action to a newly organized, wholly owned corporation. The sale was on the installment basis. He then made the settlement on behalf of the corporation. Held, the gain from the settlement in its entirety at the time of the settlement was not income to the petitioner. His gain was from the sale to the corporation and was correctly reported by him on the installment basis. Held, further, no part of the deficiency was due to fraud with intent to evade tax.

Herman A. Fischer, Esq., for the petitioner.

C. H. Curl, Esq., for the respondent.

The Commissioner determined a deficiency of $40,913.31 in the petitioner's income tax for 1933, and also determined that an additional 50 per cent of the deficiency was due under section 293 (b) of the Revenue Act of 1932. The issues for decision by the Board are (1) whether the petitioner should have reported the profit from the sale of 5,000 shares of stock of the Oakridge Cemetery Corporation, and (2) whether or not any part of the deficiency is due to fraud with intent to evade tax.

FINDINGS OF FACT.

The petitioner is an individual who filed his income tax return for the calendar year 1933 with the collector of internal revenue for the first district of Illinois.

He purchased 5,000 shares of the capital stock of the Oakridge Cemetery Corporation in 1926 from or through Robert D. Lay at a cost of $100,000. The petitioner sold the 5,000 shares of stock on October 30, 1931, to the John Griffiths Investment Trust for $7,500. He repurchased
20 the stock from the John Griffiths Investment Trust on November 16, 1931, for $7,000 and again sold the same

stock to the same trust on December 30, 1931, for $7,000. He reported the sales of the stock on his Federal income tax return for 1931 and claimed a deduction of $92,500 on that return as a loss from the sales. The deduction was allowed and the question of his liability for income tax for that year was closed by an agreement under section 606 of the Revenue Act of 1928.

The petitioner, in the latter part of 1932, received information which led him to believe that Lay had defrauded him in the transaction in 1926 whereby the petition had acquired the 5,000 shares of stock of the Oakridge Cemetery Corporation. He consulted Harry Markheim, an attorney, who made an investigation, and attempted to negotiate a settlement. Markheim became convinced, and so informed the petitioner on or before January 9, 1933, that a settlement would be made. Markheim informed the petitioner that in the proposed settlement the stock would be resold to Lay and a release of the cause of action would also be given to Lay, and that for this purpose the ownership of the stock should be again placed in the petitioner so that he would have both the ownership of the stock and the cause of action against Lay. The petitioner then purchased the stock from John Griffiths Investment Trust for $8,000. He made payment to the trust on January 10, 1933, by his personal check for $8,000 and received a certificate for the 5,000 shares of stock of the Oakridge Cemetery Corporation, which certificate was endorsed in blank.

Markheim at the same time told the petitioner that he might effect a postponement of the time of payment of income taxes on the profit which would result from the settlement and return of the stock to Lay, and he might also limit the amount of the tax, if he would organize an investment company to which he would sell the stock and cause of action on an installment basis, permitting the investment company to make the settlement with Lay. Markheim told the petitioner that he had organized such a corporation for a client under somewhat similar circumstances and the Bureau of Internal Revenue had made no objection to the method used of reporting the income in that case. The petitioner, prior to 1933, had had some thoughts relating to the formation of an investment corporation or association similar to that known as the John Griffiths Investment Trust. He instructed Markheim on January 9, 1933, to form an investment corporation as Markheim had suggested.

G. W. G. Corporation was organized on January 10, 1933, under the laws of Delaware through the instrumentality of

the Corporation Trust Co., with three of Markheim's
21 associates as directors. The petitioner on that same day paid $1,000 for all of its capital stock and he has ever since held all of that stock. The directors of the corporation on January 10, 1933, approved a proposition made by the petitioner, and to carry out their agreement the following document was executed:

This Memorandum of Agreement, Made this tenth day of January, 1933, between George W. Griffiths, of Chicago, Illinois, and G. W. G. Corporation, a Delaware corporation. Witnesseth:

First: Said George W. Griffiths hereby sells to said G. W. G. Corporation Five Thousand (5,000) shares of the capital stock of Oakridge Cemetery Corporation, an Illinois corporation, and assigns to said corporation any rights said George W. Griffiths may have against Robert D. Lay to require said Robert D. Lay to purchase said stock, and said G. W. G. Corporation hereby purchases said Five Thousand (5,000) shares of the capital stock of said Oakridge Cemetery Corporation, and hereby agrees to pay therefor the sum of Eighty-five Thousand Dollars ($85,000.00), and to assume and perform the obligations of said George W. Griffiths to E. H. Harrison to pay said E. H. Harrison Fifteen Per cent (15%) of the amount of money (after the payment of all expenses) received on the sale of said stock to said Robert D. Lay, and in consummation of said sale said George W. Griffiths has, concurrent with the execution hereof, delivered to said corporation, receipt whereof by said corporation is hereby acknowledged, Certificate No. 1003, evidencing Five Thousand (5,000) shares of said stock, standing in the name of John Griffiths Investment Trust, and endorsed by the Trustees of said John Griffiths Investment Trust in blank.

Second: Said G. W. G. Corporation agrees to pay said sum of Eighty-five Thousand Dollars ($85,000.00) as follows: The sum of One Thousand Dollars ($1,000.00) concurrently with the execution hereof, receipt whereof is hereby acknowledged; the sum of Eleven Hundred Twenty-five Dollars ($1125.00) on January 15, 1933; and the sum of Twenty-one Hundred Twenty-five Dollars ($2125.00) on the fifteenth day of January of each year thereafter, until said entire sum of Eighty-five Thousand Dollars ($85,000.00) is paid.

Said G. W. G. Corporation further agrees to pay interest on said deferred installments at the rate of Three Per Cent (3%) per annum from the date hereof, payable semi-annually on the fifteenth day of January and the fifteenth

day of July in each year on the full amount of the unpaid deferred installments.

In Witness Whereof, the parties have executed this memorandum the day and year first above written.

(Signed) G. W. Griffiths (Seal)
G. W. G. Corporation,
By Stephen J. Allie,
Its President.

(Here are attached $25 of United States documentary stamps, each with the date January 10, 1933, written thereon.)

The directors of the G. W. G. Corporation, on January 11, 1933, authorized the sale of the Oakridge Cemetery Corporation stock to Lay for $100,000, and authorized the petitioner "either in his own name or in the name of the corporation" to do whatever might be necessary or desirable to consummate the sale. The Board also authorized
22 the petitioner as treasurer to invest the proceeds of the sale in a manner consistent with the corporate purposes as stated in the charter.

The settlement with Lay was made on January 11, 1933. The petitioner signed and acknowledged an instrument dated January 11, 1933, which recited that, in consideration of the sum of $180,000 paid to him by Lay, he sold and transferred to Lay:

* * * the following stock certificates and promissory notes duly endorsed, and all my right, title and interest in and to the same:

Certificate No. 22 for Two hundred fifty (250) shares of the common stock of Oakridge Abbey, issued to George W. Griffiths, and endorsed in blank.

Certificate No. 1003 for 5,000 shares of the common stock of Oakridge Cemetery Corporation issued to John Griffiths Investment Trust, and endorsed in blank.

Promissory note of Oakridge Cemetery Corporation for Fourteen thousand dollars ($14,000), dated February 11, 1929, payable on demand and made payable to George W. Griffiths.

Promissory note of Oakridge Cemetery Corporation for Fourteen hundred dollars ($1400), dated August 10, 1932, due on demand and made payable to George W. Griffiths.

The instrument contained a further assignment of another certificate for 4,250 shares of stock of the Oakridge Cemetery Corporation held by a bank as security for bonds. The instrument further recited that, as part consideration for the payment of $180,000, Griffiths, for himself, his heirs,

administrators, and assigns, released and discharged Lay from all actions, causes of action, suits, claims, and demands which Griffiths or his assigns might ever have against Lay.

Markheim received from Lay two checks payable to the petitioner. One was for $80,000, and had to do with the securities mentioned in the agreement other than the stock here in question. The other, for $100,000, was endorsed by the petitioner and deposited on January 12, 1933, in the bank account of the G. W. G. Corporation. The board of directors of the G. W. G. Corporation on January 18, 1933, approved a report made by the petitioner as its treasurer, showing the sale of the stock to Lay for $100,000. The minutes of that meeting stated that the sale had been made pursuant to authority vested in him by the board and he had executed the transaction in his own name. The board also approved the payment of $14,566.08 representing expenses incurred in connection with the sale.

The payments of $1,000 and of $1,125, which the petitioner was to receive from the corporation in January, 1933, were received by him in March, 1933. The corporation paid him $1,243.13 in December, 1933 on account of interest on the unpaid portion of the purchase price.

The G. W. G. Corporation was licensed to do business in the State of Illinois on February 11, 1938, pursuant to advice from Markheim that, although a license was not necessary for an isolated transaction, the license would be required if the corporation were to continue business in Illinois. The G. W. G. Corporation in 1933 invested in various stocks other than the stock of the Oakridge Cemetery Corporation.

The petitioner, in his income tax return for the year 1933, reported $1,875 under "Other Income, Installment Sale (Exhibit F)." Exhibit F on his return as filed was as follows:

Sale of Personal Property on Installment Basis Held Less Than Two Years.

(1) 5,000 shares Oakridge Cemetery Corporation Common Stock purchased at Cost of.....		$8,000.00
(2) Sold on Installment Basis for Gross Price of	$85,000.00	
Less:		
(3) Legal Fees	2,000.00	
(4) Net Selling Price on Installment Basis....		83,000.00
(5) Gross Unrealized Profit.....		$75,000.00
(6) Amount Received in 1933.....		2,125.00
(7) Amount to be Reported in 1933— $\frac{\$75,000.00}{\$85,000.00} \times \$2,125.00$		1,875.00

Other items reported on the return were dividends on stock of domestic corporations, $76,628.92, which included $20,000 received as dividends from the G. W. G. Corporation; salaries and commissions, $14,358.99, which included $10,000 received as salary from the G. W. G. Corporation; and interest, $1,436.15. The record does not show whether or not the interest reported included the interest payment of $1,243.13 received by the petitioner from the G. W. G. Corporation.

The Commissioner, in determining the deficiency, increased the income reported on the return by $73,558.92, representing an understatement of profit from the sale of 5,000 shares of Oakridge Cemetery Corporation stock, with the following explanation:

The alleged assignment of this stock to G. W. G. Corporation (organized on the day of the sale January 10, 1933) has been ignored, and the transaction treated as a sale by you, for your own account.

The Commissioner also made other adjustments which are not in controversy.

OPINION.

MURDOCK: It seems desirable to review briefly some past events before discussing the transactions which give rise directly to the issues in this proceeding. Lay originally prevailed upon the petitioner to purchase the 5,000 shares of Oakridge Cemetery Corporation stock for $100,000. Thereafter, the petitioner sold the stock to the John W. Griffiths Investment Trust and sustained a loss of $92,-
24 500. A deduction of that amount was claimed and allowed on his income tax return for 1931. The petitioner learned late in 1932 that, because of something which Lay had done in the first transaction, a part, or all, of the loss might be recovered from Lay. The petitioner repurchased the stock from the John W. Griffiths Investment Trust in 1933 for $8,000. No question whatsoever is raised as to the propriety for income tax purposes of any of the transactions thus far described. Negotiations for the settlement with Lay had progressed to the point where the parties were all ready to close the transaction. The petitioner was then advised by his attorney of a method whereby he might possibly save himself from the payment of some income taxes. The steps taken to minimize the taxes are the ones and the only ones which give rise directly to the issues in this case.

The following steps were all taken upon the advice of the petitioner's counsel. The G. W. G. Corporation was formed. The process of incorporation began on the 9th of January and was completed early on the 10th. Resolutions theretofore prepared in blank were adopted by the corporation. These authorized the corporation to purchase from the petitioner the stock and the right of action. A contract of sale was executed whereby the G. W. G. Corporation became the legal owner of the stock and the right of action against Lay. The petitioner was authorized to make the settlement with Lay in his own name on behalf of the corporation. The settlement with Lay was completed on January 11 by the petitioner in his own name. The record does not show that Lay or his attorneys were advised of the sale to the corporation. The petitioner deposited to the account of the G. W. G. Corporation the $100,000 which he received from Lay.

The petitioner contends that in the settlement with Lay and in depositing the $100,000, he acted as agent for the G. W. G. Corporation, his undisclosed principal. The Commissioner has ignored the G. W. G. Corporation and has

treated the transaction as if the petitioner had never sold the stock to the corporation, but had acted entirely for himself throughout the settlement with Lay. Counsel for the respondent contends before the Board that the G. W. G. Corporation should be ignored. His contention is not supported by any showing that the sale from the petitioner to the G. W. G. Corporation did not take place or that it was in any respect illegal. He makes no showing that the petitioner acted for himself rather than as agent for the G. W. G. Corporation in concluding the settlement with Lay. He contends that the "mission" of the G. W. G. Corporation was "sinful" and that its intervention was a "nefarious tax evasion scheme", but such statements do not help to decide the case. He relies upon the case of *Gregory* v. *Helvering*, 293 U. S. 465, and upon the case of *Bus & Transport Securities Corporation* v. *Helvering*, 296 U. S. 391. Those cases dealt with the reorganization provisions of the statute and are not in point here, where the petitioner seeks to apply none of those provisions.

This is another case involving a wholly owned corporation. It requires careful scrutiny to see if there is any sufficient reason to disregard the corporate entity, which normally under the law must be recognized as a separate taxpayer from the petitioner. It is not fatal in such cases that the corporation was used deliberately to minimize income taxes. Here one taxpayer, the petitioner, made an actual bona fide sale to another. His income tax liability arises under that transaction rather than as a result of the settlement with Lay. This new corporation continued to exist, as indeed was necessary in order to carry out the installment sale contract. It paid a salary and dividends to the petitioner, which he reported in his income tax return. It paid him interest on the unpaid purchase price, which he may have reported on his income tax return. The Commissioner has not eliminated the salary and interest, as should be done if the separateness of the corporation is to be ignored. The steps taken and the reality of the corporation can not be disregarded. Cf. *Chisholm* v. *Commissioner*, 79 Fed. (2d) 14, reversing 29 B. T. A. 1334; *Grand Rapids Trust Co. et al., Administrators*, 34 B. T. A. 170; *Seymour H. Knox*, 33 B. T. A. 972; *Marjory Taylor Hardwick*, 33 B. T. A. 249; *Edwards Securities Corporation*, 30 B. T. A. 918; affd., 83 Fed. (2d) 1007; *James E. Wells*, 29 B. T. A. 222; *David Stewart*, 17 B. T. A. 604; *Rands, Inc.*, 34 B. T. A. 1094; *Ralph Hochstetter*, 34 B. T. A. 791; *William H. Albers*, 33 B. T. A. 373; *A. S. Eldridge*, 30 B. T. A. 1322; affd.,

79 Fed. (2d) 629; *Jones* v. *Helvering*, 71 Fed. (2d) 214; *Commissioner* v. *McCreery*, 83 Fed. (2d) 817.

This petitioner had sold and transferred his stock and the claim against Lay before the settlement with Lay had reached the stage where it had any income tax significance. That the taxpayer, the G. W. G. Corporation, became entitled to the $100,000 paid by Lay as a settlement. The petitioner was not entitled to the $100,000 and the gain from the transaction can not be taxed to him. He correctly reported on the installment basis his gain for 1933 from the sale to the corporation.

The respondent, to sustain his burden of proof on the fraud issue in this case, relies entirely upon the circumstances of the transaction already discussed. He claims that the use of the corporation is evidence that a part of the deficiency is due to fraud with intent to evade tax. Since the additional income was not properly included by the Commissioner it follows that no fraudulent intent can be drawn from the use of the G. W. G. Corporation.

26 But even if the petitioner were to lose on the income issue, nevertheless he would still win on the fraud issue because the record fails to indicate any fraudulent intent on his part. He made no effort to conceal the true facts and circumstances from the Commissioner. He acted upon the advice of counsel and, apparently, in the honest belief that it was proper under the revenue act. The Commissioner must make a stronger showing than he has done in this case to support the charge of fraud.

Reviewed by the Board.

Decision will be entered under Rule 50.

MELLOTT, dissenting: The opinion of the majority holds that on January 10, 1933, there was a sale of the securities by the trust to the petitioner for $8,000, an immediate sale on the installment plan of the same securities by the petitioner to his newly created corporation for $100,000, followed by a sale by the corporation, as an undisclosed principal through petitioner as its agent, to Lay for $100,000. I can not accept this view.

A substantial portion of the sum paid by Lay was paid because of petitioner's claim against him for fraud. In this connection the testimony of the lawyer who handled the transaction for the petitioner is illuminating. He said:

> I told Mr. Griffiths that our right against Lay consisted of a cause of action involving a breach of trust in the general nature of a tort claim, and that in order to effect the settlement it would be necessary to unite the ownership of the stock and the tort claim, or claim

for breach of trust, in the same person. I therefore told him it would be essential for him to reacquire the stock that had been sold to the John Griffiths Investment Trust, and he said he would.

The petitioner testified to the same effect. He stated that the attorney told him "that in order to clean it up I should buy the stock back from the Investment Trust because of my right of action against Lay, and I believe Lay's attorney wanted it that way because the Investment Trust only had the stock and I had the right of action."

While petitioner assigned to the corporation any rights which he might have against Lay to require him "to purchase said stock" it is significant that no attempt was made to assign to the corporation his "cause of action involving a breach of trust in the nature of a tort claim, or claim for breach of trust." Perhaps such claim was not assignable under the laws of Illinois. Cf. *Babcock* v. *Farwell*, 146 Ill. App. 307; affd., 245 Ill. 14; 91 N. E. 683; *North Chicago St. Ry. Co.* v. *Ackley*, 171 Ill. 100; 49 N. E. 222. But even if it were assignable it is significant that Lay was not ad-
27 vised that any assignment had been made and the release was executed by petitioner personally rather than on behalf of the corporation. The release recited that:

> • • • as part consideration for the payment to the undersigned by the said Robert D. Lay of the said sum of One hundred eighty thousand dollars ($180,000) I, the undersigned George W. Griffiths, for myself, my heirs, administrators and assigns, do hereby release and forever discharge the said Robert D. Lay, his heirs, executors, administrators, and assigns, from all actions, causes of action, contracts, debts, liabilities, obligations, suits, claims and demands whatsoever which I, the undersigned ever had, now have, or which I, my heirs, executors, administrators or assigns or any of them, hereafter can, shall or may have for or by reason of any act of omission, cause, matter or thing whatsoever, from the beginning of the World to the date hereof.

The conclusion is inescapable that the major portion of the consideration paid by Lay was for the settlement of the tort action. Under the circumstances I am of the opinion that it constituted income to petitioner. The corporation set up by him was devised merely for the purpose of preventing the amount "paid from vesting even for a second in the man who" was entitled to receive it and the whole transaction is simply an attempt to attribute the fruits "to

a different tree from that on which they grew." *Lucas* v. *Earl*, 281 U. S. 111.

In addition, I am of the opinion that the principle recognized and applied by the court and the Board in connection with the sale of property by the S. A. MacQueen Co. is clearly applicable. See *S. A. MacQueen Co.*, 26 B. T. A. 1337, affd., 67 Fed. (2d) 857. In that case the corporate owner of real estate had entered into an agreement to convey it to a purchaser for $150,000. The three stockholders of the corporation authorized the conveyance of the property to its president for a lesser sum and he executed a declaration of trust declaring his intention to distribute the profits to the stockholders in proportion to their holdings. The trust was carried out and the profit, being the difference between the sum paid by the president to the corporation and the sum received by him from the sale of the property, was distributed to the stockholders. It was held that substance and not form should control; that although in form there were two sales of the corporate real estate, in substance the transaction was a sale by the corporation through the agency of its president; that the obvious purpose of the procedure was to avoid the payment of tax and, under the facts, that the profit should be taxed to the petitioner.

Under the facts before us, I think finding should be made that although in form there was a sale by the corporation to Lay, in substance the transaction was a sale by the petitioner, through the agency of the corporation, of securities owned by him, contemporaneous with the settlement by him of his tort action against Lay. "A given result at the end of a straight path is not made a different result because reached by following a devious path." *Minnesota Tea Co.* v. *Helvering*, ... U. S. ..... (Jan. 17, 1938). Cf. *Snowberg* v. *Commissioner*, 77 Fed. (2d) 446; certiorari denied, 296 U. S. 586.

ARUNDELL, SMITH, TURNER, ARNOLD, and HARRON agree with this dissent.

29 UNITED STATES BOARD OF TAX APPEALS.

• • (Caption—82624) • •

DECISION.

Pursuant to the Board's Findings of Fact and Opinion, promulgated February 9, 1938, the respondent herein hav-

petitioner having on March 16, 1938, filed an acquiescence in said recomputation, now, therefore, it is

Ordered and Decided That there is a deficiency in income tax of $4,668.98 for the year 1933.

Entered March 21, 1938.

(s) J. E. Murdock,
Member.

(Seal)

37 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT.

Guy T. Helvering, Commissioner of Internal Revenue,
Petitioner,
vs.
George W. Griffiths,
Respondent.

B. T. A. Docket No. 82624.

NOTICE OF FILING PETITION FOR REVIEW.

Filed Jun. 21, 1938.

To: George W. Griffiths, 228 North LaSalle Street, Chicago, Illinois.

You are hereby notified that the Commissioner of Internal Revenue did, on the 15th day of June, 1938, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Seventh Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 15th day of June, 1938.

(Signed) J. P. Wenchel, RLW
J. P. Wenchel,
Chief Counsel, Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 17 day of June, 1938.

(s) Geo. W. Griffiths,
Respondent on Review.

38 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.
• • (Caption—BTA-82624) • •

NOTICE OF FILING PETITION FOR REVIEW.

Filed Jun. 21, 1938.

To: Herman A. Fischer, Esq., Room 2500—1 North LaSalle Street, Chicago, Illinois.

You are hereby notified that the Commissioner of Internal Revenue did, on the 15th day of June, 1938, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Seventh Circuit, of the decision of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 15th day of June, 1938.

(Signed) J. P. Wenchel, RLW
J. P. Wenchel,
Chief Counsel, Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 11 day of June, 1938.

(s) Herman A. Fischer,
Attorney for Respondent on Review.

Filed Jun. 15, 1938. 30 IN THE UNITED STATES CIRCUIT COURT OF APPEALS.
• • (Caption—BTA-82624) • •

PETITION FOR REVIEW AND ASSIGNMENTS OF ERROR.

Filed Jun. 15, 1938.

To the Honorable Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Now Comes Guy T. Helvering, Commissioner of Internal Revenue, by his attorneys, James W. Morris, Assistant Attorney General, J. P. Wenchel, Chief Counsel, Bureau

of Internal Revenue and Charles J. Reilly, Special Attorney, Bureau of Internal Revenue and respectfully shows:

I.

Jurisdiction.

The petitioner on review (hereinafter referred to as the Commissioner) is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States. The respondent on review (hereinafter referred to as the taxpayer) is and was during the calendar year 1933 an individual resident of and an inhabitant within the jurisdiction of the United States Circuit Court of Appeals for the Seventh Circuit, and filed his income tax return for the year 1933 in the office of the Collector of Internal Revenue at Chicago, Illinois, which office is within the judicial circuit of the United States Circuit Court of Appeals for the Seventh Circuit.

31 II.

Nature of Controversy.

During 1926 the taxpayer purchased from or through Robert D. Lay 5,000 shares of stock of the Oakridge Cemetery Corporation at a cost of $100,000.00. During 1930 the taxpayer sold, repurchased and then sold again these shares of stock to John Griffiths Investment Trust for $7,500.00 and was allowed a loss on said sale of $92,500.00 in income tax return filed for that year.

In 1932 the taxpayer repurchased the stock from the John Griffths Investment Corporation for $8,000.00. On January 10, 1933, the G. W. G. Corporation was organized under the laws of Delaware and taxpayer purchased all the capital stock of the newly organized company for $1,000.00. On the same date an agreement was entered into between the taxpayer and the new corporation whereby the taxpayer agreed to sell to the G. W. G. Corporation for $85,000.00 the 5,000 shares of stock of the Oakridge Cemetery Corporation. On January 11, 1933 the directors of the G. W. G. Corporation authorized the sale of the Oakridge Cemetery Corporation stock to Robert D. Lay for $100,000.00 and authorized the taxpayer, either in his own name or in the name of the corporation to do whatever might be desirable to consummate the sale. On the same date the taxpayer signed and acknowledged an instrument which provided that in consideration of the sum of $180,000.00 paid to him

by Lay, the taxpayer sold and transferred certain stocks and promissory notes, including the 5,000 shares of Oakridge Cemetery stock above referred to. For this stock a check was received from Lay in the amount of $100,000.00. The check for $100,000.00 was endorsed by the taxpayer and deposited on January 12, 1933 in the bank account of the G. W. G. Corporation. In his income tax return for the year 1933 taxpayer reported the sale of said 5,000 shares as having been made to the G. W. G. Corporation.

32 On November 1, 1935, the Commissioner, pursuant to the provisions of section 272(a) of the Revenue Act of 1932 (47 Stat. 233), as amended by section 501 of the Revenue Act of 1934 (48 Stat. 755), forwarded to the taxpayer, by registered mail, a notice of deficiency, wherein the taxpayer was notified of his, the Commissioner's determination of a deficiency in the taxpayer's income tax liability for the year 1933 in the amount of $40,813.31 and of a penalty of $20,406.66. In the aforesaid notice of deficiency the Commissioner disregarded the transfer of stock by the taxpayer to the G. W. G. Corporation and treated the whole transaction as a sale by the taxpayer to Robert D. Lay. As a result, the Commissioner determined that the taxpayer had understated his profit on the sale of said stock to Lay by $73,558.92. This adjustment is responsible for approximately $36,144.00 of the deficiency in tax asserted in the notice of deficiency. Other adjustments were also made in the notice of deficiency which are not here in controversy.

On January 6, 1936, the taxpayer filed a petition with the United States Board of Tax Appeals for a redetermination of the proposed deficiency in his income tax liability for the year 1933, as shown by the notice of deficiency dated November 1, 1935, as aforesaid, which petition was assigned Docket No. 82624. On March 2, 1936, the Commissioner filed with the Board of Tax Appeals his answer to the petition so filed by the taxpayer. The proceedings came on for hearing before a division of the Board of Tax Appeals, sitting at Chicago, Illinois, on June 24, 1937. The issues involved were (1) whether the petitioner should have reported the profit on the sale to Robert D. Lay of the 5,000 shares of stock of the Oakridge Cemetery Corporation and (2) whether or not any part of the deficiency was due to fraud with intent to evade tax.

33 On February 9, 1938, the Board of Tax Appeals promulgated its opinion in this proceeding, wherein it was held that the gain from the sale of the Oakridge Cemetery Corporation stock was correctly reported by the taxpayer in his return and was further held that no part of the de-

ficiency was due to fraud with intent to evade tax. On March 21, 1938 the Board entered its decision in this proceeding wherein it was ordered and decided that, in accordance with its opinion of February 9, 1938, there is a deficiency in income tax of $4,668.98 for the year 1933.

34

III.

Assignments of Error.

That the said Commissioner, being aggrieved by the opinion and decision of the United States Board of Tax Appeals, desires a review thereof, in accordance with the statutes in such cases made and provided, by the United States Circuit Court of Appeals for the Seventh Circuit in which power of such review is vested, and as reasons for such review he alleges that the Board in rendering its opinion and in entering its decision committed the following errors:

1. The Board erred in finding for petitioner.
2. The Board erred in not finding for the respondent.
3. The Board erred in finding that petitioner, during 1933, made a bona fide sale to G. W. G. Corporation of 5,000 shares of stock of the Oakridge Cemetery Coporation.
4. The Board erred in failing to find that the sale of 5,000 shares of Oakridge Cemetery stock to Robert D. Lay during 1933 was in fact a sale by the petitioner.
5. The Board erred in that its finding of facts and decision are not supported by the evidence.

Wherefore, the Commissioner petitions that the opinion of the United States Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Seventh Circuit; that a transcript of the record be prepared in accordance with law and with the rules of said Court and transmitted to the Clerk of said Court for filing, and that appropriate action be taken to the end that the errors
35 complained of may be reviewed and corrected by said Court.

(s) James W. Morris,
Assistant Attorney General.
(Signed) J. P. Wenchel, RLW
J. P. Wenchel,
Chief Counsel, Bureau of Internal Revenue.

Of Counsel:
Charles P. Reilly,
Special Attorney, Bureau of Internal Revenue.

36 United States of America,
District of Columbia. } ss.

I, Charles P. Reilly, do solemnly swear that I am a Special Attorney of the Bureau of Internal Revenue and as such duly authorized to verify the foregoing petition for review; that I have read the foregoing petition for review and know the contents thereof; that the statements of facts and allegations therein contained are true to the best of my knowledge and belief. So help me God.

(s) Charles P. Reilly.

Subscribed and sworn to before me this 14th day of June, 1938.

George W. Kilis,
(Seal) *Notary Public.*

My Commission expires Nov. 15, 1942.

87 UNITED STATES BOARD OF TAX APPEALS.

(Caption—82624)

ORDER ENLARGING TIME.

For cause appearing of record, it is

Ordered: That the time for transmission and delivery of the record sur petition for review of the above entitled proceeding in the United States Circuit Court of Appeals for the Seventh Circuit, be and it is hereby extended to September 10, 1938.

(Signed) Charles P. Smith,
Member.

Dated: Washington, D. C.,
Aug. 13, 1938.
jd

Now, Sept. 2, 1938, the foregoing order enlarging time certified from the record as a true copy.

B. D. Gamble,
(Seal) *Clerk, U. S. Board of Tax Appeals.*

84 IN THE UNITED STATES CIRCUIT COURT OF APPEALS. Filed Aug. 10, 1938.

* * (Caption—82624) * *

PRAECIPE FOR RECORD.

Filed Aug. 10, 1938.

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the said Circuit Court of Appeals for the Seventh Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of the proceedings before the Board.
2. Pleadings before the Board,

(a) Petition, including annexed copy of deficiency letter.

(b) Answer.

3. Findings of fact, including copies of all exhibits filed, opinion and decision of the Board.
4. Petition for review, together with proof of service of notice of filing petition for review and of service of a copy of petition for review.
5. Notice of lodgment of statement of evidence with proof of service of notice of lodgment.
6. Statement of evidence as settled and allowed.

85 7. This praecipe.

(Signed) J. P. Wenchel RLW
J. P. Wenchel,
Chief Counsel, Bureau of Internal Revenue.

Service of a copy of the within praecipe is hereby admitted this 25 day of July, 1938.

(Signed) Herman A. Fischer,
Attorney for Respondent.

86 UNITED STATES BOARD OF TAX APPEALS.

(Caption—82624)

CERTIFICATE.

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 85, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 2nd day of September, 1938.

B. D. Gamble,

(Seal) *Clerk, United States Board of Tax Appeals.*

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 78, inclusive, contain a true copy of the printed record, printed under my supervision and filed on the fourteenth day of October, 1938, in the following entitled cause:

Commissioner of Internal Revenue,
Petitioner,

vs.

George W. Griffiths,
Respondent,

No. 6752, October Term, 1938, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 4th day of May, A. D. 1939.

Frederick G. Campbell,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the fifth day of October, in the year of our Lord one thousand nine hundred and thirty-seven, and of our Independence the one hundred and sixty-second.

Commissioner of Internal Revenue
6752 *vs.*
George W. Griffiths.

Petition for Review of Decision of the United States Board of Tax Appeals.

And, to-wit: On the ninth day of September, 1938, there was filed in the office of the Clerk of this Court, an appearance of counsel for Petitioner, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 6752. October Term, 1938.

Commissioner of Internal Revenue

vs.

George W. Griffiths.

The Clerk will enter our appearance as counsel for Respondent.

Delbert A. Clithero,
Herman A. Fischer,
Carlton L. Fischer,
1 No. La Salle St.,
Chicago, Illinois.

Endorsed: Filed September 9, 1938. Frederick G. Campbell, Clerk.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, held in the City of Chicago and begun on the fourth day of October, in the year of our Lord one thousand nine hundred and thirty-eight, and of our Independence the one hundred and sixty-third.

And afterwards, to-wit: On the first day of November, 1938, there was filed in the office of the Clerk of this Court, an appearance of counsel for Petitioner, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 6752. October Term, 1938.

Commissioner of Internal Revenue

vs.

George W. Griffiths.

The Clerk will enter our appearance as counsel for Petitioner.

J. P. Wenchel,
Chief Counsel, Bureau of Internal Revenue.
Charles H. Curl,
Special Attorney, Bureau of Internal Revenue.

Endorsed: Filed November 1, 1938. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the seventh day of November, 1938, there was filed in the office of the Clerk of this Court, an appearance of counsel for Petitioner, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 6752. October Term, 1938.

Commissioner of Internal Revenue

vs.

George W. Griffiths.

The Clerk will enter our appearance as counsel for Petitioner.

James W. Morris,
Assistant Attorney General.
Sewall Key,
Special Assistant to the Attorney General.

Endorsed: Filed November 7, 1938. Frederick G. Campbell, Clerk.

And afterwards, to-wit: On the seventh day of February, 1939, the following further proceedings were had and entered of record, to wit:

Tuesday, February 7, 1939.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Walter E. Treanor, Circuit Judge.

Commissioner of Internal Revenue *vs.* George W. Griffiths.	6752	Petition for Review of Decision of the United States Board of Tax Appeals.

Now this day come the parties by their counsel and this cause comes on to be heard on the transcript of the record and briefs of counsel and on oral argument by Mr. Ellis N. Slack, counsel for petitioner, and by Mr. Herman A. Fischer, counsel for respondent, and the Court having heard the same takes this matter under advisement.

And afterwards, to-wit: On the twenty-fifth day of February, 1939, there was filed in the office of the Clerk of this Court, the Opinion of the Court, which said Opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 6752. OCTOBER TERM, 1938, JANUARY SESSION, 1939.

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*
vs.
GEORGE W. GRIFFITHS, *Respondent.*
} Petition for Review of Decision of the United States Board of Tax Appeals.

February 25, 1939.

Before SPARKS, MAJOR and TREANOR, *Circuit Judges.*

MAJOR, *Circuit Judge.* This is a petition for review of a decision of the United States Board of Tax Appeals, entered March 21, 1938, denying a deficiency of $40,913.31 as determined by the Commissioner in respondent's income tax for 1933.

The facts, as found by the Board, and not in dispute, are as follows: In 1926, respondent purchased from or through Robert D. Lay at a cost of $100,000, 5,000 shares of the capital stock of the Oakridge Cemetery Corporation. October 30, 1931, the same shares of stock were sold to the John Griffiths Investment Trust for $7,500. November 16, 1931, the stock was repurchased from said investment trust for $7,000, and again sold to the same trust on December 30, 1931 for $7,000. For the year 1931, respondent, in his income tax return, claimed and was allowed a deduction of $92,500 as a loss from these transactions.

Respondent, about January 1, 1933, discovered that Lay had defrauded him in the transaction in 1926, wherein the shares of stock in question were purchased. He consulted and employed Harry Markheim, an attorney, who investi-

gated and commenced negotiations to effect a settlement. On January 9, 1933, respondent was advised by his counsel that Lay would probably make a settlement in the next two or three days. At that time he was also informed that his claim against Lay consisted of a cause of action involving a breach of trust in the nature of a tort claim and that it would be essential for him to reacquire the stock in order to unite the ownership of the stock with the claim. During this same conversation, respondent was advised by his counsel that he might effect a postponement of the time of paying, as well as limit the amount of income taxes on the profit which would result from a settlement and return of the stock to Lay by organizing an investment company to which he would sell the stock and cause of action on an installment basis, permitting the investment corporation to make the settlement with Lay. Respondent had theretofore given thought to the formation of such an investment corporation and on January 9, 1933, instructed his counsel to organize the same.

As a result, arrangements were made by telephone through the instrumentality of the Corporation Trust Company for the organization of the G. W. G. Corporation, which was effected, on the following day, under the laws of Delaware, with three of Markheim's associates as directors. Respondent paid $1,000 for all the capital stock of the corporation. A formal meeting was held in Delaware at 9:00 A. M. on the morning of the 10th, and a meeting in the office of Markheim in Chicago at 10:00 the same morning. On the afternoon of that day, Markheim was definitely advised that Lay was going to pay. The directors of the corporation, on January 10th, approved a proposition made by the taxpayer and entered into a written agreement.[1] On this day, also, respondent purchased the stock from the

1. This Memorandum of Agreement, Made this tenth day of January, 1933, between George W. Griffiths, of Chicago, Illinois, and G. W. G. Corporation, a Delaware corporation.

Witnesseth:

First: Said George W. Griffiths hereby sells to said G. W. G. Corporation Five Thousand (5,000) shares of the capital stock of Oakridge Cemetery Corporation, an Illinois corporation, and assigns to said corporation any rights said George W. Griffiths may have against Robert D. Lay to require said Robert D. Lay to purchase said stock, and said G. W. G. Corporation hereby purchases said Five Thousand (5,000) shares of the capital stock of said Oakridge Cemetery Corporation, and hereby agrees to pay therefor the sum of Eighty-five Thousand Dollars ($85,000.00), and to assume and perform the obligations of said George W. Griffiths to E. H. Harrison to pay said E. H. Harrison Fifteen Per Cent (15%) of the amount of money (after the payment of all expenses) received on the sale of said stock to said Robert D. Lay, and in consummation of said sale said George W. Griffiths has, concurrent with the

John Griffiths Investment Trust, paying $8,000 therefor, and received a certificate endorsed in blank.

On January 11, 1933, the directors of the G. W. G. Corporation approved the sale of the corporation stock to Lay for $100,000 and authorized respondent "either in his own name or in the name of the corporation" to do whatever might be necessary or desirable to consummate the sale. Respondent, as treasurer of the corporation, was also authorized to invest the proceeds of the sale in a manner consistent with the corporate purposes as stated in the charter.

There were matters in dispute between respondent and Lay other than the stock in question, which were all included in a settlement made on January 11, 1933. At that time, respondent received the sum of $180,000 from Lay in the form of two checks, one in the sum of $100,000 and the other in the sum of $80,000. The former was in settlement of the claim arising from the sale of the 5,000 shares of stock of Oakridge Cemetery Corporation, and the latter in settlement of claims concerning other stocks and notes not here material. Respondent, at the time of the making of said settlement, signed and acknowledged an instrument which recited that in consideration of the sum of $180,000 paid to him by Lay, he sold and transferred to Lay various certificates of stock and promissory notes, including the stock here involved, and on behalf of himself, his heirs, administrators and assigns, released and discharged Lay from all actions, causes of action, suits, claims and demands which respondent or his assigns might have against Lay. Lay

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execution hereof, delivered to said corporation, receipt whereof by said corporation is hereby acknowledged, Certificate No. 1008, evidencing Five Thousand (5,000) shares of said stock, standing in the name of John Griffiths Investment Trust, and endorsed by the Trustees of said John Griffiths Investment Trust in blank.

Second: Said G. W. G. Corporation agrees to pay said sum of Eighty-five Thousand Dollars ($85,000.00) as follows: The sum of One Thousand Dollars ($1,000.00) concurrently with the execution hereof, receipt whereof is hereby acknowledged; the sum of Eleven Hundred Twenty-five Dollars ($1,125.00) on January 15, 1933; and the sum of Twenty-one Hundred Twenty-five Dollars ($2,125.00) on the fifteenth day of January of each year thereafter, until said entire sum of Eighty-five Thousand Dollars ($85,000.00) is paid.

Said G. W. G. Corporation further agrees to pay interest on said deferred installments at the rate of Three Per Cent (3%) per annum from the date hereof, payable semiannually on the fifteenth day of January and the fifteenth day of July in each year on the full amount of the unpaid deferred installments.

In Witness Whereof, the parties have executed this memorandum the day and year first above written.

(Sgd) G. W. Griffiths (SEAL)

G. W. G. Corporation,

By Stephen J. Allen,

Its President.

had no knowledge concerning the formation of the G. W. G. Corporation or any agreement or transactions between the respondent and such corporation. The $100,000 check received by respondent from Lay was endorsed by respondent, and on January 12, 1933, deposited in the bank to the credit of the G. W. G. Corporation.

January 18, 1933, the directors of the trust approved a report made by respondent as its treasurer, showing the sale of stock to Lay for $100,000. The minutes of that meeting stated that the sale had been made pursuant to authority vested in respondent by the Board and approved the payment of $14,566.08, representing expenses incurred in connection with the sale. In accordance with the terms of the agreement between respondent and the G. W. G. Corporation, respondent received in March, 1933, $1,000 and $1,125, and in December, 1933, received from the Corporation $1,243.13 on account of interest on the unpaid portion of the purchase price. The G. W. G. Corporation was licensed to do busines in Illinois on February 11, 1933, and invested in various stocks other than those here involved.

Respondent, in his income tax return for the year 1933, reported no income on account of the transaction with Lay, but included in his report installment payments and interest which he received from the G. W. G. Corporation.

The position of the Commissioner, as disclosed in his deficiency letter to respondent is:

> "The alleged assignment of this stock" (5000 shares of the stock of Oak Ridge Cemetery Corporation) "to G. W. G. Corporation" * * * "has been ignored and the transaction" (a succeeding sale to Robert D. Lay) "treated as a sale by you for your own account."

It is the theory of respondent, sustained by the Board, (six members dissenting) that by reason of the agreement between respondent and the G. W. G. Corporation, all the claim and interest of the former was transferred to the latter, and inasmuch as they are separate entities for the purposes of taxation, the profit realized from the transaction with Lay was that of the corporation, and, hence, respondent is not chargeable therewith. Notwithstanding the argument by respondent, not disputed by the petitioner, that the sale of the stock to the corporation was free from fraud; that the transaction was in no way concealed and therefore not illegal, we are presented with a situation in which the taxpayer and his counsel intentionally formulated a contrivance for the sole purpose of enabling the taxpayer to avoid the payment of tax. Authorities are called to our attention where such a purpose has been given

judicial sanction. One of the leading cases is that of *Gregory* v. *Helvering*, 293 U. S. 465. There the court, while considering another section of the Revenue Act, used language which we regard as pertinent. The court recognized the rule here contended for by respondent which it stated on page 469:

> "The legal right of a taxpayer to decrease the amount of what otherwise would be his taxes, or altogether avoid them, by means which the law permits, cannot be doubted."

After making this pronouncement, however, the court went on to say:

> "Putting aside, then, the question of motive in respect of taxation altogether, and fixing the character of the proceeding by what actually occurred, what do we find? Simply an operation having no business or corporate purpose—a mere device which put on the form of a corporate reorganization as a disguise for concealing its real character, and the sole object and accomplishment of which was the consummation of a preconceived plan, not to reorganize a business or any part of a business, but to transfer a parcel of corporate shares to the petitioner. No doubt, a new and valid corporation was created. But that corporation was nothing more than a contrivance to the end last described. It was brought into existence for no other purpose; it performed, as it was intended from the beginning it should perform, no other function."

Thus, the court, while recognizing the transaction as within the law, yet in very forcible language, denied the claim advanced by the taxpayer.

It would be difficult to find language more aptly describing the present situation. Here, as there, the sole object was the consummation of a preconceived plan not to organize a corporation for a business purpose, but merely as a step in the contrivance to escape taxation. It performed, as was intended from the beginning, no other function, with the possible exception of the subsequent transaction of some business not inconsistent with the scheme of which it was a part. If speed in perfecting a plan to evade taxation be a commendable attribute, the taxpayer and his counsel would be entitled to great praise. Within 24 hours after respondent had information that his claim against Lay was to be settled for $100,000, the corporation was organized in Delaware, a meeting of the directors held in Chicago, an agreement made between the corporation and respondent by which the money to be received in conform-

ity with the settlement was to be paid to the corporation, and before the setting of the sun on the following day, the money had actually been received by respondent and deposited in the bank to the credit of the corporation, all for the purpose of enabling respondent to escape payment of tax upon the profit thus derived and which otherwise would have belonged to the Government.

It is argued by the respondent that by reason of the agreement between him and the corporation, he was acting merely as agent of the latter in making the settlement with Lay and in receiving the money by reason of the same. This was merely another link in the scheme, the form of which must give way to substance. Rather than designating respondent as the agent of the corporation, it is more apt to designate the corporation as the agent of respondent. It was he who was responsible for its organization, who owned all of its stock and whose directors were office associates of his counsel. He was the guiding and controlling genius, rather than the corporation. Regardless of whether the assignment of the stock to the corporation by respondent be construed as contended for by petitioner, or to the contrary, we think he retained effective control and dominion over the same. Under the circumstances, he, no doubt, could have terminated the plan almost as rapidly as he created it. The transaction was for his benefit and not the corporation. We think there is merit to the contention that the income was actually received by the taxpayer in his individual capacity, but if not, it was merely diverted into his corporate pocket, of which he was sole proprietor, and syphoned on the installment basis into his individual pocket. The substance of the transaction rather than the form is controlling.[2]

In *Corliss* v. *Bowers*, 281 U S. 376, the taxpayer created a trust, the income from which was to be paid to his wife for life, the remainder over to their children. By the instrument creating the trust, he reserved power "to modify or alter in any manner, or revoke in whole or in part," the trust agreement. He thereby sought to escape tax liability. The holding was against the position of the taxpayer, and the court on page 378 said:

> "The income that is subject to a man's unfettered command and that he is free to enjoy at his own option may be taxed to him as his income, whether he sees fit to enjoy it or not."

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2 *United States* v. *Phellis*, 257 U. S. 156.
Lee v. *Commissioner of Internal Revenue*, 96 F. (2d) 55.
Helvering v. *Gordon*, 87 F. (2d) 663.

In *Lucas* v. *Earl*, 281 U. S. 111, the court, in discussing a situation wherein the taxpayer had sought to escape liability, on page 114 said:

> "But this case is not to be decided by attenuated subtleties. It turns on the import and reasonable construction of the taxing act. There is no doubt that the statute could tax salaries to those who earned them and provide that the tax could not be escaped by anticipatory arrangements and contracts however skilfully devised to prevent the salary when paid from vesting even for a second in the man who earned it. That seems to us the import of the statute before us and we think that no distinction can be taken according to the motives leading to the arrangement by which the fruits are attributed to a different tree from that on which they grew."

In the recent case of *Groves* v. *Commissioner*, 99 F. (2d) 179, the court in considering a question wherein a scheme was devised to evade taxes, on page 183 said:

> "The fact that petitioner organized the two corporations, owned and controlled entirely by him, in anticipation of diverting to them the income he knew he would earn, instead of receiving these earnings himself, cannot avail him to escape a proper tax. A taxpayer cannot enter into a contract under which he assigns to another income to be earned and thereby shift the tax on that income from himself. Here the assignment was made to a corporation the petitioner himself controlled."

The court in *Chisholm* v. *Commissioner*, 79 F. (2d) 14, relied upon by the Board and stressed by respondent, held that the mere purpose to avoid tax by a transfer of property by individuals to a partnership, does not, in itself, vitiate the transaction for tax purposes. The court, however, found that the purpose was to form an enduring partnership to invest and reinvest on a rather extensive scale. It was held that the decision turned on the question whether there was a genuine partnership, or a mere mask for an individual transaction, and concluded it was the former.

In the instant case, it is our view that what was done, including the corporate organization, was a mere mask to cover the real transaction. We therefor conclude the Commissioner correctly treated the transactions as made on respondent's own account. The decision of the Board

of Tax Appeals is reversed with directions to determine the deficiency in conformity with such conclusion.

Endorsed: Filed February 25, 1939. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the twenty-fifth day of February, 1939, the following further proceedings were had and entered of record, to-wit:

Saturday, February 25, 1939.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Walter E. Treanor, Circuit Judge.

Commissioner of Internal Revenue *vs.* George W. Griffiths.	6752	Petition for Review of Decision of the United States Board of Tax Appeals.

This cause came on to be heard on the transcript of the record from the United States Board of Tax Appeals, and was argued by counsel.

On Consideration Whereof: It is ordered and adjudged by this Court that the Decision of the United States Board of Tax Appeals entered in this cause on March 21, 1938, be, and the same is hereby reversed: And that this cause be, and the same is hereby remanded to the said United States Board of Tax Appeals with directions to determine the deficiency in conformity with the Opinion of this Court.

And afterwards, to-wit: On the fifteenth day of March, 1939, there was filed in the office of the Clerk of this Court, a Petition for Rehearing, which said Petition for Rehearing is not copied here.

And afterwards, to-wit: On the fifteenth day of April, 1939, the following further proceedings were had and entered of record, to-wit:

Saturday, April 15, 1939.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Walter E. Treanor, Circuit Judge.

Commissioner of Internal Revenue *vs.* George W. Griffiths.	6752	Petition for Review of Decision of the United States Board of Tax Appeals.

It is ordered by the Court that the Petition for a Rehearing of this cause be, and the same is hereby denied.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 81 to 92, inclusive, contain a true copy of the proceedings had and papers filed, excepting briefs of counsel and Petition for Rehearing, in the following entitled cause:

Commissioner of Internal Revenue,
Petitioner,

vs.

George W. Griffiths,
Respondent,

No. 6752, October Term, 1938, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 4th day of May, A. D. 1939.

Frederick G. Campbell,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 9, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.